

WETLAND CONSERVATION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

OF THE

COMMITTEE ON

ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 978

A BILL TO EXTEND UNTIL OCTOBER 1, 1993, THE AUTHORIZATION FOR APPROPRIATIONS TO THE MIGRATORY BIRD CONSERVATION FUND, AND FOR OTHER PURPOSES

AND

S. 1329

A BILL TO EXTEND UNTIL OCTOBER 1, 1993, THE AUTHORITY FOR APPROPRIATIONS TO PROMOTE THE CONSERVATION OF MIGRATORY WATERFOWL AND TO OFFSET OR PREVENT THE SERIOUS LOSS OF WETLANDS AND OTHER ESSENTIAL HABITAT, AND FOR OTHER PURPOSES

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WETLAND CONSERVATION

TUESDAY, JULY 12, 1983

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION,
Washington, D.C.

The subcommittee met at 10 a.m., in room SD-406, Dirksen Senate Office Building, Hon. John H. Chafee (chairman of the subcommittee) presiding.

Present: Senators Chafee, Stafford, Symms, and Mitchell.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Good morning.

Today's hearing is on wetland conservation. We will be considering two bills today. One, S. 978, is Secretary Watt's proposal entitled: "Protect Our Wetlands and Duck Resources Act of 1983." This is the so-called POWDR term that you will hear us use this morning.

The other is S. 1329, a bill introduced in the Senate by Senator Stafford and myself and in the House by Congressman Forsythe.

As I've stated before, these bills are not in competition with one another. We are all trying to reach the same goal: To promote the conservation of wetlands, to offset or to prevent the loss of these important natural areas. The bills have some similarities and they have some important differences. The rationale for these differences is set forth in the statements I made when I introduced these bills. There is no need to repeat those points here.

We have a group of five witnesses today and I am anxious to hear what they have to say. Rather than take up our time with comments and observations that I have made before, I will simply place in the record a copy of the statement I made upon introduction of S. 1329.

[Senator Chafee's statement follows:]

(1)



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No. 69

Senate

THURSDAY, MAY 19, 1983

(Legislative day of Monday, May 16, 1983)

By Mr. CHAFEE: (for himself and Mr. STAFFORD):

S. 1329. A bill to extend until October 1, 1983, the authority for appropriations to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands and other essential habitat, and for other purposes; to the Committee on Environment and Public Works.

EMERGENCY WETLANDS RESOURCES ACT OF 1983

● Mr. CHAFEE. Mr. President, on April 5, 1983, I introduced S. 978, Secretary Watt's proposal entitled "The Protect Our Wetlands and Duck Resources Act of 1983." Although I expressed some doubts about the efficacy of that bill as written, I commended the Secretary and the administration for helping to focus the attention of the Federal Government, the Congress, State, and local governments, the private sector, and the general public on a serious natural resource problem: inadequate conservation of our Nation's rapidly disappearing wetlands. That commendation should be repeated today. Secretary Watt and the POWDR Task Force deserve recognition for their continuing efforts in this area. I look forward to continuing to work with the Secretary and the members of POWDR on this issue.

I stated on April 5 that I was in the process of drafting legislation that would build upon the base provided by Secretary Watt's proposal. Today, Mr. President, I am introducing one part of that legislation, the Emergency Wetlands Resources Act of 1983. Working with my distinguished colleague on the Finance Committee, Senator WALLOP, and our colleagues on the House Ways and Means Committee, I hope to introduce shortly the second part of this legislative package, a bill that will build upon the Tax Treatment Extension Act of 1980 and will encourage the dedication of private lands to wetland uses.

The problems with the POWDR bill (S. 978) are threefold. First, although I agree that it makes little sense for the destruction of important natural resources to be underwritten and encouraged with Federal tax dollars, I

am disturbed by the number and scope of exceptions to the bill's proposed subsidy prohibition. Enactment of a bill with many loopholes could, in the long run, be counterproductive for wetlands by giving the appearance that they have been protected when, in fact, they have not. There are many questions which need to be answered concerning the effects of the title I limit on Federal expenditures and the methods to be used for mapping. Second, the bill does not adequately address the Federal role in and responsibility for the acquisition of wetlands habitat. This responsibility stems, in part, from our Nation's migratory bird treaty obligations with Japan, the Union of the Soviet Socialist Republics, Canada, Mexico, and with various other countries in the Western Hemisphere. Third, the bill does nothing to encourage the dedication of private lands to wetland uses.

All this is not to say, Mr. President, that the POWDR bill was a waste of time. Many of the provisions found in my legislation are based upon discussions that took place at various POWDR meetings and appear in the Secretary's bill. The Secretary and I both recognize that the introduction of legislation is a first step, not a final one. These bills are not in competition. My legislation contains recommendations for refinement of the Secretary's proposal. I intend to proceed quickly to hearings on S. 978 and the Emergency Wetlands Act and hope to eventually marry the best features of both.

The Emergency Wetlands Resources Act of 1983 will accelerate Federal and State acquisition of wetlands habitat, equitably distribute the costs of such acquisition by utilizing an existing source of funding—the land and water conservation fund—to supplement moneys provided by hunters and other conservationists, place a high priority on the national wetlands inventory project which maps and analyzes the status and trends of our Nation's wetlands, and will develop the information needed to decide how we can stop the destruction of these important natural areas that is currently being

underwritten and encouraged with Federal tax dollars. The second part of this legislative package, the tax proposal, will encourage the dedication of private lands to wetland uses by providing tax incentives for such activities. Together, these two bills will constitute a major step in the initiative to conserve the Nation's rapidly disappearing wetlands.

For the record, I would like to repeat many of the observations and comments that I expressed on April 5. First, it should be noted that the need to conserve wetlands has never been more critical than it is today. At present, the modification and the destruction of wetland habitat is the single most important factor affecting migratory waterfowl abundance. Wetlands, however, are important for many reasons other than the conservation of waterfowl. They are biologically and economically important to the lives of every American. They contribute to the production of a commercial and recreational fishery harvest valued at several billion dollars annually. Equally important, they provide millions of Americans with opportunities for recreational activities such as boating and bird watching, support a major portion of the Nation's multimillion dollar annual fur harvest, provide savings in natural flood and erosion control, and help to supply the Nation's increasing demand for safe, pure water. In all, wetlands contribute from \$20 to \$40 billion a year to the national economy.

For far too long, wetlands have been considered wastelands. They have been drained or filled and converted to other uses, often with technical and financial assistance through various governmental programs, including those for navigation, flood control, and agricultural development.

Approximately one-half of the 215 million acres of wetlands that once existed in the contiguous United States have disappeared and the continued destruction of these areas poses a serious threat to the Nation's environmental and economic well-being. A recent Department of the Interior study concerning the status and trends of wetlands in the United States found that current losses total 458,000 acres, or 715 square miles, every year. Over 9 million acres, an area nearly twice the size of New Jersey, were lost in the 20-year period from the 1950's to the 1970's covered by the study.

A Federal role in the acquisition of wetland habitat has been recognized by Congress for many years. The enactment of the Migratory Bird Conservation Act in 1929 and the Migratory Bird Hunting and Conservation Stamp

Act of 1934 established the foundation for our present wetland acquisition program. Other programs have also contributed. The enactment of the Wetlands Loan Act in 1961, as amended, has generated to date some \$145 million in loan money for acquiring wetlands. Contributions from the land and water conservation fund have supplemented wetland acquisition efforts but only to the extent that the area acquired is for a congressionally authorized refuge or is habitat for an endangered species. Although the Federal Government obviously cannot purchase all wetlands, we should, at a minimum, accelerate the acquisition program that was established in the 1950's.

During the 1950's the Department of Interior, the States, and the International Association of Fish and Wildlife agencies jointly determined the 12.5 million acres of waterfowl habitat needed to be under State and Federal control and managed to maintain waterfowl populations that existed then. The responsibility for acquiring this habitat was split with the Federal share placed at 8 million acres—including 3.5 million already owned. The passage of the Wetlands Loan Act in 1961 provided a source of additional funds for the migratory bird conservation fund and enabled the U.S. Fish and Wildlife Service to increase acquisition of wetlands. The Service determined during 1976 that 1.95 million acres of the Federal portion of waterfowl habitat remained to be acquired and that those acres should be preserved during a 10-year period between fiscal year 1977 and fiscal year 1986. This would be done to offset accelerated losses and degradation of wetlands and help maintain waterfowl populations at desired levels. The 10-year acquisition objective was divided into 33 habitat categories and acquisition concept plans were developed for categories 1 to 15. In the first 7 years of the 10-year period, the Fish and Wildlife Service will have acquired only about 18 percent, or 359,410 acres, of the remaining 1.95 million acres of waterfowl habitat needed. Clearly, we need to do a better job of meeting our goals.

The Federal Government would need to spend an average of \$140 million per year to accomplish the current acquisition goal of 1.6 million acres in a new 10-year period—it was originally supposed to have been completed in 1986. With or without this bill, we will not be able to satisfy our original goals. The Emergency Wetlands Resources Act of 1983 will provide, for an emergency 10-year period, approximately \$50 million per year for

Federal acquisition and an additional \$50 million per year for State acquisition. Of this, approximately \$25 million per year will be raised from user fees and \$75 million per year will come from the existing land and water conservation fund which contains \$900 million each year consisting primarily of offshore oil and gas revenues. It is my hope that the effect of the failure to meet our original goals will be lessened by enactment of legislative proposals based on the Tax Treatment Extension Act of 1980, the foundation for gifts for conservation purposes, and increased dedication of private lands to wetland uses.

Mr. President. No discussion of wetlands would be complete without reference to the major Federal provision, enacted in 1972, for the protection of wetlands, including such areas as coastal and inland marshes and estuaries, river-associated water-saturated areas, inland lakes, potholes, bogs, mudflats, and bottomland hardwood forests: Section 404 of the Clean Water Act. A new role in wetland maintenance was established, that of regulator of wetland development. Permit requirements under the U.S.

Army Corps of Engineers' regulatory authority of section 404 of the act extend to all waters of the United States, including wetlands. The Secretary's POWDER bill and the bill being introduced today cannot and should not be viewed as substitutes for a strong section 404 program. These bills are designed to augment, not replace, existing programs.

I urge my colleagues to review these important issues and to join me in an attempt to develop a reasonable, aggressive wetlands program. It gives me great pleasure to announce that the distinguished chairman of the Committee on Environment and Public Works, Senator STAFFORD, is a cosponsor of this bill and that a gentleman with whom I have collaborated on several important environmental issues in the past, Congressman Ed FORSYTHE, plans to introduce identical legislation in the House of Representatives. I look forward to working with Senator STAFFORD, Congressman FORSYTHE and our other colleagues, as well as Secretary Watt, members of the POWDER Task Force, and interested members of the public. I ask unanimous consent that the text of the Emergency Wetlands Resources Act of 1983 and a summary of its major provisions be included in the Record at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

S. 1329

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Wetlands Resources Act of 1983".

FINDINGS AND STATEMENT OF PURPOSE

SEC. 2. (a) FINDINGS.—The Congress finds that—

(1) wetlands play an integral role in maintaining the quality of life through material contributions to our national economy, food supply, water supply and quality, flood control, and fish, wildlife, and plant resources, and thus to the health, safety, recreation, and economic well-being of all our citizens;

(2) wetlands provide habitat essential for the breeding, spawning, nesting, migration, wintering and ultimate survival of a major portion of the Nation's migratory and resident fish and wildlife, including migratory birds, endangered species, commercially and recreationally important finfish, shellfish and other aquatic organisms, and contain many unique species and communities of wild plants;

(3) our Nation's migratory bird treaty obligations with Canada, Mexico, Japan, the Union of the Soviet Socialist Republics, and with various countries in the Western Hemisphere require Federal protection of wetlands used by migratory birds for breeding, wintering or migration and needed to achieve and to maintain optimum population levels, distributions, and patterns of migration;

(4) wetlands, and the fish, wildlife, and plants dependent thereon, provide significant recreational and commercial benefits, including—

(A) contributions to a commercial marine harvest valued at over ten billion dollars annually;

(B) support for a major portion of the Nation's multi-million dollar annual fur and hide harvest; and

(C) fishing, hunting, birdwatching, nature observation and other wetland-related recreational activities that generate billions of dollars annually;

(5) wetlands enhance the Nation's water quality and supply by serving as ground-water recharge areas, nutrient traps and chemical sinks;

(6) wetlands provide a natural means of flood and erosion control by retaining water during periods of high runoff, thereby protecting against loss of life and property;

(7) wetlands constitute only a small percentage of the land area of the United States, are estimated to have been reduced by half in the contiguous States since the founding of our Nation, and continue to disappear by hundreds of thousands of acres each year;

(8) certain activities of the Federal government have inappropriately altered or assisted in the alteration of wetlands, thereby unnecessarily stimulating and accelerating the loss of these valuable resources and the environmental and economic benefits that they provide; and

(9) the existing Federal, State and private cooperation in wetlands conservation should be strengthened in order to minimize further losses of these valuable areas and to

assure their management in the public interest for this and future generations.

(b) **PURPOSE.**—It is the purpose of this Act to promote, in concert with other Federal and State statutes and programs, the conservation of our Nation's wetlands in order to maintain the public benefits they provide and to fulfill international obligations contained in various migratory bird treaties and conventions with Canada, Mexico, Japan, the Union of Soviet Socialist Republics, and with various countries in the Western hemisphere by—

(1) intensifying cooperative efforts among private interests and local, State, and Federal governments for the management and conservation of wetlands; and

(2) intensifying efforts to protect the Nation's wetlands through acquisition in fee, easements or other interests and method by local, State, and Federal governments and the private sector.

DEFINITIONS

SEC. 3. For purposes of this Act, the term—

(a) "Committees" means the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate;

(b) "Secretary" means the Secretary of the Interior; and

(c) "wetland" means land transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. Generally, wetlands are areas inundated or saturated by surface or ground water frequently enough and for long enough duration to support a prevalence of plants or animals typically adapted to life in saturated soil conditions including but not limited to such areas as coastal or inland marshes, or estuaries, river-associated water-saturated areas, inland lakes, potholes, bogs, mudflats, or bottomland hardwood forests.

TITLE I. EXTENSION OF WETLANDS LOAN ACT

SEC. 101. (a) The first section of the Act entitled "An Act to promote the conservation of migratory waterfowl by the acquisition of wetlands, and for other essential waterfowl habitat, and for other purposes," approved October 4, 1961 (75 Stat. 813; 16 U.S.C. 715k-3) (referred to in this Act as the "Wetlands Loan Act"), is amended by striking out "September 30, 1983" and inserting in lieu thereof "September 30, 1993."

(b) Section 3 of the Wetlands Loan Act (75 Stat. 813; 16 U.S.C. 715k-5) is amended by striking out the first three sentences thereof.

TITLE II. REVENUES FOR MIGRATORY BIRD CONSERVATION FUND

ADMISSION FEES AT CERTAIN REFUGE UNITS

SEC. 201. (a) Notwithstanding the provisions of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 4601-4 et seq.), in order to provide additional revenues for the conservation of the Nation's wetland resources, entrance or admission fees may be charged at certain units of the National Wildlife Refuge System designated by the Secretary of the Interior for such fees (referred to in this Act as "designated units").

(b) A valid migratory bird hunting and conservation stamp, as established under

the Act of March 16, 1934 (48 Stat. 451; 16 U.S.C. 718a), as amended, or a valid Golden Eagle Passport, as established under the Land and Water Conservation Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 4601-4 et seq.), shall function as a permit for entry into any designated unit. Use of a valid migratory bird hunting and conservation stamp as a permit under this subsection shall not affect the requirements of the Act of March 16, 1934 (48 Stat. 451; 16 U.S.C. 718a), as amended, relating to the taking of migratory waterfowl.

(c)(1) Permits for a single visit to any designated unit shall be made available by the Secretary of the Interior at reasonable admission fees for persons who choose not to purchase an annual permit as provided in subsection (b) of this section. For purposes of this subsection, "single visit" means a more or less continuous stay within a designated unit by a person or group described in subsection (d) of this section. Payment of a single visit admission fee and issuance of a single visit permit shall authorize exits from and re-entries to a single designated unit for a period of from one to fifteen days. Such period shall be defined for each designated unit by the Secretary based upon a determination of the period of time reasonably and ordinarily necessary for such a single visit.

(2) Notwithstanding section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 715a), as amended, revenues from permits under this subsection, less 10 percent to be used—

(A) to defray administrative costs incurred by the Secretary in providing for such permits; and

(B) for the purposes for which the designated units have been established; shall be paid into the migratory bird conservation fund established under section 4 of the Act of March 16, 1934 (48 Stat. 451; 16 U.S.C. 718d), as amended.

(d) A permittee pursuant to subsection (b) or (c) of this section and any persons accompanying such permittee in a single, private, noncommercial vehicle, or, where entry to the area is by any means other than a single, private noncommercial vehicle, the permittee and any accompanying spouse, children, or parents shall be entitled to general entrance into any designated unit.

(e) The Secretary of the Interior shall establish procedures providing for the issuance of a lifetime admission permit to any citizen of, or person domiciled in, the United States, if such citizen or person applies for such permit, and is blind or permanently disabled. Such procedures shall assure that such permit shall be issued only to persons who have been medically determined to be blind or permanently disabled for purposes of receiving benefits under Federal law as a result of said blindness or permanent disability as determined by the Secretary. Such permit shall be nontransferable and shall be issued without charge.

(f) The Secretary of the Interior shall establish procedures providing for the issuance of a lifetime admission permit to any citizen of, or person domiciled in, the United States, if such citizen or person applies for such permit, and is sixty-two years of age or older. Such permit shall be nontransferable and shall be issued without charge.

(g) Special admission permits for uses such as group activities, or for travel by private, noncommercial vehicle over any road or highway to any land in which a permittee has a property interest if such land is within any designated unit, may be issued in accordance with procedures and at fees established by the Secretary. Revenues from such permits shall be paid into the migratory bird conservation fund established under section 4 of the Act of March 16, 1934 (48 Stat. 451; 16 U.S.C. 718d), as amended.

(h) Any permit authorized by this section shall be non-transferable and shall be available for purchase at any designated unit. Such permit shall not authorize any uses for which fees are charged under the Land and Water Conservation Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 4601-4 et seq.).

(i) All fees established pursuant to this section shall be fair and equitable, taking into consideration the direct and indirect cost to the Government, the benefits to the recipients, the public policy or interest served, the comparable fees charged by non-Federal public agencies, the economic and administrative feasibility of fee collection and other pertinent factors. Clear notice that a fee has been established pursuant to this section shall be prominently posted at each designated unit and at appropriate locations therein and, to the extent practicable, shall be included in publications distributed at such units.

(j) Periodic reports indicating the number and location of fee collection areas, the number and location of potential fee collection areas, capacity and visitation information, the fees collected, and other pertinent data, shall be coordinated and compiled by the U.S. Fish and Wildlife Service and transmitted to the Committee on Merchant Marine and Fisheries of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate. Such reports, which shall be transmitted no later than March 31 annually, shall include any recommendations which the Service may have with respect to improving this aspect of the migratory bird conservation fund program.

PRICE OF MIGRATORY BIRD HUNTING AND CONSERVATION STAMP

SEC. 202. Section 2(b) of the Act of March 16, 1934 (48 Stat. 451; 16 U.S.C. 718b), as amended, is amended by striking out "\$7.50" and inserting in lieu thereof "\$10.00" and by striking out "any hunting year" and inserting in lieu thereof "hunting years 1984 and 1985, \$12.50 for hunting years 1986 and 1987, and \$15.00 for each hunting year thereafter."

TRANSFERS TO MIGRATORY BIRD CONSERVATION FUND

SEC. 203. Notwithstanding any other provision of law, all import duties collected on arms and ammunition, as specified in subpart A of part 5 of schedule 7 of the Tariff Schedules of the United States, shall, beginning on the date of the enactment of this Act, be paid into the migratory bird conservation fund established under section 4 of the Act of March 16, 1934 (48 Stat. 451; 16 U.S.C. 718d), as amended.

SEC. 204. For the period beginning on October 1, 1983, and ending at the close of September 30, 1993, \$75,000,000 shall be paid each year from the land and water conserva-

tion fund established under the Land and Water Conservation Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 4601-4 et seq.) into the migratory bird conservation fund established under section 4 of the Act of March 16, 1934 (48 Stat. 451; 16 U.S.C. 718d), as amended.

TITLE III—FINANCIAL ASSISTANCE TO STATES FOR WETLANDS ACQUISITION

SEC. 301. (a) Subsection (b) of section 4 of the Act of March 16, 1934 (48 Stat. 451; 16 U.S.C. 718d), as amended, is amended by striking out "subsection (c)" and inserting in lieu thereof "subsections (c) and (d)".

(b) Section 4 of the Act of March 16, 1934 (48 Stat. 451; 16 U.S.C. 718d), as amended, is amended by inserting at the end thereof the following new subsection:

"(d)(1) For the period beginning on October 1, 1983, and ending at the close of September 30, 1993, the Secretary of the Interior is authorized to provide from the fund financial assistance not to exceed \$50,000,000 annually to the States for purposes of wetlands acquisition, as defined in subsection (d)(2) of this section. Payments for such purposes may be made to the States as hereinafter provided, subject to such terms and conditions as the Secretary considers appropriate and in the public interest.

"(2) For purposes of this subsection, the term 'wetlands acquisition' means obtaining a property interest in wetlands or associated areas by purchase or lease if obtaining such interest contributes appreciably to the preservation of said wetlands and associated populations of fish, wildlife and plants.

"(3) Sums available from the fund for wetlands acquisition under this subsection shall be apportioned among the States by the Secretary, whose determination shall be final, on the basis of (i) the ratio which each State's obligation of funds, other than federal funds, to wetlands acquisition bears to the total amount of funds, other than federal funds, obligation by the States to wetlands acquisition during the most recent fiscal year for which the calculation of such funds is practicable, as determined by the Secretary; (ii) an amount not to exceed 1 percent of the total of amounts allocated to the States under this subsection, to be used to defray administrative costs incurred by the Secretary in making payments under this subsection. Such apportionments shall be adjusted equitably so that no less than one-half of 1 per centum of the total amount apportioned shall be allocated to each State.

"(4) A State may elect to avail itself of the benefits of this subsection by:

"(A) submitting to the Secretary a comprehensive fish and wildlife resource management plan which shall ensure the perpetuation of these resources for the economic, scientific and recreational enrichment of the people. Such plans will be prepared with opportunity for public comment and provided in a format required by the Secretary which shall be compatible with standards and formats required of States for other fish and wildlife grants administered by the Secretary, particularly the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669 et seq.) Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777 et seq.), and Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2901 et seq.).

If the Secretary finds that such plans conform to standards established by him and approves such plans, he may finance up to

75 per cent of the cost of implementing segments of those plans meeting the purposes of this subsection from funds apportioned under this subsection; or

"(B) submitting to the Secretary full and detailed statements of any wetlands acquisition project proposed for that State. If the Secretary finds, after opportunity for public comment, that such project meets with the standards set by him and approves said project, the State shall furnish the Secretary such surveys, plans, specifications, and estimates therefore as may be required. If the Secretary approves the plans, specifications, and estimates for the project, he shall so notify the State within 90 days of receiving said plans, specifications, and estimates and immediately set aside so much of the fund as represents the share of the United States payable under this subsection on account of such project, which sum so set aside shall not exceed 75 per centum of the total estimated cost thereof.

"(5) The Secretary shall approve only such comprehensive plans or projects as may be substantial in character and design and the expenditure of funds hereby authorized shall be applied only to such approved wetlands acquisition plans or projects and if otherwise applied they shall be replaced by the State before it may participate in any further apportionment under this subsection. No payment of any money apportioned under this subsection shall be made on any comprehensive wetlands acquisition plan or project until an agreement to participate therein shall have been submitted to and approved by the Secretary.

"(6) When the Secretary finds that any approved project or segment of an approved comprehensive plan has been completed in compliance with approved plans and specifications or an approved comprehensive plan the Secretary shall cause to be paid to the proper authority of such State the amount set aside for said project or plan. The Secretary may from time to time make payments on said project or plan as the same progresses; but these payments, including previous payments, if any, shall not be more than the United States' pro rata share of the project in conformity with said plans and specifications or said comprehensive plan.

"(7) Any amount of any apportionment under paragraph (3) of this subsection that for any fiscal year remains unobligated at the close thereof shall continue to be available for obligation until the close of the succeeding fiscal year. At the close of such succeeding fiscal year, such amounts shall remain in the migratory bird conservation fund established under section 4 of the Act of March 16, 1934 (48 Stat. 451; 16 U.S.C. 718d), as amended, and shall become available for expenditure under said Act.

"(8) The Secretary is authorized to make rules and regulations for carrying out the provisions of this subsection."

TITLE IV. WETLANDS INVENTORY AND TREND ANALYSIS

Sec. 401. (a) The Secretary, acting through the Director of the United States Fish and Wildlife Service, shall continue the National Wetlands Inventory Project and shall—

(1) produce, by September 30, 1986, final National Wetlands Inventory maps for the areas that have been identified by the Service as top priorities for mapping, including the entire coastal zone of the United States, floodplains of major rivers and the Prairie Pothole Region;

(2) produce, by September 30, 1988, final National Wetlands Inventory maps for those portions of the contiguous United States for which final maps have not been produced earlier;

(3) produce, as soon as practicable, final National Wetlands Inventory maps for Alaska and other noncontiguous portions of the United States; and

(4) produce, by September 30, 1985, and at 10-year intervals thereafter, reports to update and improve the information contained in the report dated September 1982 and entitled "Status and Trends of Wetlands and Deepwater Habitat in the Conterminous United States, 1950's to 1970's".

(b) There is authorized to be appropriated the following sums, to remain available until expended:

(1) \$7,000,000 per fiscal year for the fiscal years beginning on October 1, 1983 and ending at the close of September 30, 1986, to carry out paragraph (1) of subsection (a) of this section;

(2) \$5,000,000 per fiscal year for the fiscal years beginning on October 1, 1987 and ending at the close of September 30, 1993, to carry out paragraphs (2) and (3) of subsection (a) of this section; and

(3) \$3,000,000 per fiscal year for the fiscal years beginning on October 1, 1983 and ending at the close of September 30, 1995, to carry out paragraph (4) of subsection (a) of this section.

REPORT TO CONGRESS

Sec. 402. (a) The Secretary shall, by September 30, 1985, prepare and submit to the Committees a report regarding wetlands losses in the United States.

(b) The report required under subsection (a) shall contain—

(1) an analysis of the causes of wetlands destruction and degradation;

(2) a compilation and analysis of federal statutory and regulatory mechanisms, including expenditures and financial assistance, which induce wetlands destruction or degradation;

(3) a compilation and analysis of federal expenditures resulting from wetlands destruction and degradation;

(4) an analysis of the environmental and economic impact of eliminating or restricting future federal expenditures and financial assistance, whether direct or indirect, which have the effect of encouraging the destruction or degradation of wetlands, including but not limited to: public works expenditures; assistance programs such as price support programs, commodity loans and purchase programs and disaster assistance programs; soil conservation programs; and certain income tax provisions.

(5) an analysis of the environmental and fiscal impact of failure to restrict future federal expenditures and financial assistance which have the effect of encouraging the destruction or degradation of wetlands, including but not limited to: assistance for normal silviculture activity (such as plowing, seeding, planting, cultivating, minor drainage, or harvesting for the production of fiber or forest products); federal expenditures required incident to studies, evaluations, design, construction, operation, maintenance, or rehabilitation of federal water resource development activities, including channel improvements; the commodity loans and purchases program and cotton, feed grain, wheat, and rice production stabilization programs administered by the Department of Agriculture; federal expenditures for the construction of publicly owned or publicly operated highways, roads, structures, or facilities that are essential links in a larger network or system; and general revenue sharing grants made under section 102 of the State and Local Fiscal Assistance

Amendments of 1972 (86 Stat. 919; 31 U.S.C. 1221); and

(6) recommendations for the conservation of wetlands resources based on an evaluation and comparison of all management alternatives, and combinations thereof; such as State and local actions, Federal actions, and initiatives by private organizations and individuals.

(c) There is authorized to be appropriated \$1,000,000 to carry out the provisions of this section, which sum shall be available until expended.

EMERGENCY WETLANDS RESOURCES ACT OF 1983: SUMMARY OF MAJOR PROVISIONS

TITLE I. EXTENSION OF WETLANDS LOAN ACT

This title would amend the Wetlands Loan Act to extend the availability of funds under it for 10 years, through September 30, 1993, and to delete the provisions for repayment of advances under the Act.

TITLE II. REVENUES FOR MIGRATORY BIRD CONSERVATION FUND

Section 201 would provide the Secretary of the Interior with authority to require a fee for entrance into certain designated units of the National Wildlife Refuge System. A valid migratory bird hunting and conservation stamp (a Federal duck stamp) or a Golden Eagle Passport would function as an annual entry permit. Single visit permits would also be available. The approximately \$3.5-5.0 million that this provision is expected to raise on an annual basis would be deposited into the Migratory Bird Conservation Fund for federal and state wetlands acquisition programs.

Section 202 would gradually increase the price of the federal duck stamp from \$7.50 to \$10.00 to \$12.50 to \$15.00.

Section 203 would direct that duties on imported arms and ammunition be paid into the Migratory Bird Conservation Fund.

Section 204 would direct that \$75,000,000 be transferred each year, for an emergency 10-year period, from the Land and Water Conservation Fund into the Migratory Bird Conservation Fund for federal and state wetlands acquisition programs.

TITLE III. FINANCIAL ASSISTANCE TO STATES FOR WETLANDS ACQUISITION

This title would amend the Migratory Bird Conservation Fund Act to authorize, for 10 years, a program of matching-grants to States to assist with federally approved wetlands acquisition projects. The program would make \$50,000,000 available annually for federal assistance in an amount equal to 75 percent of the total cost of each approved project.

TITLE IV. WETLANDS INVENTORY AND TREND ANALYSIS

Section 401 would require competition of the National Wetlands Inventory program for mapping the Fish and Wildlife Service's priority areas within 3 years. Mapping of the rest of the contiguous United States would be completed within 5 years. This section would also require a periodic update of the Service's recent report on the status and trends of our nation's wetlands.

Section 402 would require that the Secretary conduct a study and, by September 1985, prepare a report to Congress regarding wetland losses in the United States. The study would examine the extent to which federal subsidies encourage the destruction of wetlands and would make recommendations for the conservation of wetlands resources based on an evaluation and comparison of all management alternatives. ●

Senator CHAFEE. There are two points that should be emphasized. First, we must recognize that S. 1329 is only one piece of the puzzle. It is a bill designed to accelerate Federal and State wetland acquisition programs and to lay the groundwork for future legislation. Obviously, acquisition is not the only solution but it is an extremely important part of a larger plan.

Encouraging private sector initiatives is crucial, as is development of a consistent Federal policy, and maintenance of a strong Federal regulatory program such as the Clean Water Act's section 404 program. However, failure to acquire as many of these important areas as we can is, to my mind, penny wise and pound foolish. The time for action is now. If we fail to act now, the opportunity may be lost forever. As time goes by, the wetlands are disappearing—there is no question about that—and the cost of those remaining is escalating. The short-term budgetary savings associated with deferred acquisition just doesn't make sense.

Second, I want to welcome Secretary Watt and to commend him and the members of the POWDR task force for the time and effort that they have devoted to this issue. The Secretary was kind enough to ask me to be a member of that group and I have not been able to attend as many meetings as I would have liked. However, I do know the group is active. To my knowledge they have at least met three times in different parts of the country; perhaps more than that.

Your contribution to that cause, Mr. Secretary, is appreciated. I look forward to working with you to marry the best features of our two proposals and to enact an effective bill between now and September 30.

We are very pleased that Senator Mitchell could be here this morning. He is a very active member and a ranking member of this subcommittee. So Senator Mitchell, if you have an opening statement now would be the time.

Senator MITCHELL. Thank you very much, Mr. Chairman.

OPENING STATEMENT OF HON. GEORGE J. MITCHELL, U.S. SENATOR FROM THE STATE OF MAINE

Senator MITCHELL. I want to begin by acknowledging and commending your efforts and those of Secretary Watt for directing attention to the pressing need to conserve wetlands. The measures which you and the Secretary proposed and which we are considering today contribute substantially to the search for the best way to improve protection of our Nation's wetland resources.

Few Americans would disagree that wetlands are of national importance. Waterfowl and other water birds are extremely dependent on wetlands throughout their life cycles as are many fur-bearing animals. It is estimated that nearly two-thirds of the fish caught by American commercial fishermen are dependent on estuarine areas and their associated wetlands. These areas also buffer the effects of storms, purify water, aid in ground water recharge and provide substantial flood control.

I know the State that I represent, Maine, benefits enormously from its wetlands. Fish and wildlife nurtured by wetlands provide recreational support and trapping opportunities for nearly 40,000

people in our State. These activities contribute nearly \$120 million annually to Maine's economy. More than \$7 million is received from fishing and hunting licenses alone. Maine's commercial fishing industry brings the State approximately \$300 million each year.

The rate of destruction of such valuable areas is truly alarming. Each day this Nation loses almost 1,000 acres of wetlands to dredging, filling, draining and impoundment. More than 100 million acres—nearly half of the wetlands once found in the lower 48 States—are now gone. We must as a nation renew our efforts to save these precious resources. In enacting legislation to that end we must take steps which will be genuinely effective and in considering proposals for such legislation we must be careful to differentiate between those which provide real results and those which will not.

I look forward to Secretary Watt's testimony, particularly the specific results he believes his proposal would achieve and I look forward to comments also on the legislation introduced by Senator Chafee. I thank you, Mr. Chairman and thank you, Mr. Secretary, for being here today.

Senator CHAFEE. Thank you, Senator Mitchell.

At this time I would like to publicly acknowledge your deep concern and help in this area. I think that the State of Maine is very fortunate and certainly the people in the United States are fortunate to have somebody such as you in this Congress and in this Senate who really cares about these matters and has devoted a good deal of time and attention to this very, very important field. So I want to take this chance to thank you for your continued interest.

Mr. Secretary, we welcome you here and look forward to your statement. You can read it or submit it, however you wish.

STATEMENT OF HON. JAMES G. WATT, SECRETARY, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY CRAIG J. POTTER, DEPUTY ASSISTANT SECRETARY, U.S. FISH AND WILDLIFE SERVICE; AND F. EUGENE HESTER, DEPUTY DIRECTOR, U.S. FISH AND WILDLIFE SERVICE

Secretary WATT. Thank you, Mr. Chairman.

I appreciate the fact that you are holding these hearings and you welcome continuing interest in the wetlands issue.

At my confirmation hearings in early January 1981 you and I had a good healthy exchange on this very issue evidencing your interest, as well as my interest, in wetlands.

I think you, in your introductory remarks, set the stage for what I think is the healthy way to proceed. We have, on behalf of the administration, recommended legislation that the President would sign and we fully support in every detail but that we also consider to be a working document that can be changed and perfected as collective judgment would dictate. We think that we need to move ahead aggressively and, frankly, are using the September 30 date that you alluded to in your opening remarks as the action forcing event in the hopes that Congress will address the more comprehensive issue of the need to accelerate the preservation of wetlands.

So I come as an enthusiastic advocate of the POWDR bill but I don't want to come across with my enthusiasm as if that is the beginning and end of the matter. I think collectively we can work out a legislative approach that will be yet another weapon in our arsenal to protect the wetlands from the destruction that is coming on.

It is in that spirit that I have been so concerned and appointed last year the Protect Our Wetlands and Duck Resources group, what we call the POWDR group. Senator Chafee, as he mentioned, does serve on that. It is a group of conservation, corporate and Government leaders concerned about the future of wetlands. We wanted to establish a public and private partnership that would seek new solutions, new tools that might be available for solving the problems resulting in the loss of wetlands.

That group in its several deliberations came forward with a collective judgment that we have embodied in what has been introduced by Senator Chafee and labeled as S. 978. That is the Protect Our Wetlands and Duck Resources [POWDR].

It does not address all the issues that the Congress may want to address but it does address the issues that this administration can enthusiastically support and the President would sign quickly into law.

We hoped that this proposal would focus widespread public attention on the continuing destruction of wetlands and it would serve as a cornerstone for development of the comprehensive legislative program to conserve our valuable wetlands resources. I think, Mr. Chairman, it has provided a dialog and you have introduced a bill which I think we can work with, probably by merging valuable parts of both in what will be a solution.

The responsibility for migratory birds was first established in 1916 by international treaty. From this beginning, wetlands protection has become a high Federal priority, not only because of the importance of wetlands to migratory birds, but also for the many other economic and environmental benefits that they provide.

Until recently, the Federal answer has been to buy wetlands or easements on them, and put them in protected status. It has become clear, however, that this approach is not, and cannot be, the only answer.

The Federal Government simply does not have the money to buy up all the threatened wetlands. That was apparent to me in 1973, when, as Director of the Bureau of Outdoor Recreation in the Department of the Interior, I prepared the first nationwide outdoor recreation plan.

In that plan I envisioned that the Department would develop a plan for protecting wetland areas of highest wildlife and recreation value with emphasis on methods that do not require public acquisition.

Almost 10 years later, as I have mentioned in a discussion with you, Mr. Chairman, during my confirmation proceedings, we reaffirmed that commitment. Last year, I became increasingly convinced that something had to be done to protect wetlands, not next year or 10 years from now. Unfortunately, not enough has been done in the 10 years since I last spoke out on this issue.

A single approach such as acquisition cannot succeed; the loss of wetlands must be attacked on all fronts. I believe that our bill

opens up a multiple approach for the attack that needs to be brought about in an aggressive manner. Again, I want to emphasize, I think we need to get started with what we can now do and not wait to study and study. I frequently use the phrase that the trouble with Government is that there is a paralysis by analysis. Let's do what we can. We can analyze additional problems down the road, but let's get started on a most aggressive program.

Senator Chafee, you played a prominent role and made an extremely important contribution, I think, to conservation and economics in America when you championed the Coastal Barrier Resources Act. I was honored and pleased to work with you on that and I think that you personally have hammered out a formula of success for addressing conservation areas such as coastal barriers, wetlands and other critical areas that we may need to preserve.

Subsidies of the Federal Government should not be made available for destroying those things which are vital to our conservation effort. That is why, in the POWDR bill, we would immediately eliminate in designated areas subsidies such as new Federal flood insurance, grants for planning and administering local economic development programs and grants for airport planning and development. Other subsidies that would be prohibited in system components include HUD community development block grants and new FHA and VA guaranteed housing loans.

Some think the exclusions contained in the bill are too many; others believe that the prohibitions are too stringent. Exclusions from this prohibition are similar to those in the Coastal Barrier Resources Act. It is interesting that when you try to do something in Government, as the Senators present well know, it comes at you from all sides.

You are doing too much, or not enough and the result is you do nothing. I plead guilty to all the charges, the prohibitions are too strict and they are not strict enough. Whatever you want to charge me with, I plead guilty. Let's get on with doing what we can in a reasonable fashion.

We think the POWDR approach does that. It starts doing things right now. But I need to emphasize that the bill will not prohibit private landowners from building on their property. It will not impose federally mandated duties on State or local governments and it will not supersede other Federal restrictions concerning wetlands. Instead, it advances the commonsense approach that wetlands destruction should not be underwritten and encouraged with Federal tax dollars.

The remainder of the POWDR bill would accelerate the protection and management of key wetland habitat for migratory birds.

Title II would strengthen State wetland protection efforts by authorizing for 10 years grant from the Land Water Conservation Fund for Wetland Conservation projects. Grants would be made available based on the amount of three times the revenues dedicated to wetland conservation from each State's duck stamp program. About half of the States have such a program in place. Others are starting this year and many others are considering proposals to begin. This provision would have the lasting effect of encouraging all States to supplement their wetland conservation efforts in the future by instituting this type of stamp program.

It would also give States flexibility in using the Federal money they receive. There are many ways to conserve these wetlands resources and we encourage the States to seek such alternatives. It allows the States and their professional managers to set up the criteria that they need to manage their wetlands and it gives them more flexibility than just acquiring fee title. The Federal Government has acquired land in fee title. That is not sufficient, nor would it be sufficient to require the States to limit their efforts to acquisition. We must have the professional managers come in and enhance wetlands to increase their productivity as well as conserve them.

Title III of the bill would extend the authorization of appropriations under the Wetlands Loan Act for 10 years and would forgive the repayment of the advances made under that act.

Mr. Chairman, I want to highlight this point. There is a provision on the House side to extend that act. But that provision does not forgive the loan. I am not sure if the Senate side does. I guess your bill would.

Senator CHAFEE. Our bill is the same on that.

Secretary WATT. It would forgive?

Senator CHAFEE. Yes. Ours would forgive and I suspect Congressman Forsythe is the same.

Secretary WATT. His is not.

Senator CHAFEE. He left that out.

Secretary WATT. We urge that he include a provision to forgive that loan. I don't want to belabor the point. The President would sign a bill forgiving that \$200 million loan.

Senator CHAFEE. That is good news. I think we want to thank you for that. I suspect that that was your intervention with OMB that you secured that.

Secretary WATT. It is a departure from past history.

Senator CHAFEE. Yes. I think they must be getting soft over there or something. But anyway, we are glad. We will take advantage of it.

Secretary WATT. They are not soft. They just know priorities when they see them.

Senator CHAFEE. That is the spirit. We need to come across on this.

Secretary WATT. I am lobbying hard now for a moment on this issue. I would hate to see the September 30 action forcing date come and go and have Congress only address the wetlands loan extension issue because for too many years we have been studying this issue and not addressing it.

Not only do I want to extend the loan period and forgive it at the end of the extension, but I want to use that as an effort to get the Congress attention to address the greater issues as your bill and our bill would do.

I don't need to preach to this group. I understand that. But we need to move across the board on this.

Title IV of the POWDER bill would increase the revenue accruing to the migratory bird conservation fund by almost 100 percent every year. This would be done by raising the price of the duck stamp to \$15 and by authorizing us to require a valid duck stamp

or a single-visit permit for entrance into certain designated units of the national wildlife refuge system.

For years, waterfowl hunters have unselfishly contributed to wetlands conservation through the purchase of duck stamps. It is high time we ask others who enjoy the wildlife and outdoor recreational opportunities of our refuges to join in this conservation effort.

Finally, I would like to note, Mr. Chairman, that in conjunction with the POWDR task force we are examining the possibilities for encouraging the public to make more effective use of available tax options to conserve wetlands. When alternative land use opportunities are available, the tax implications each option are a critical factor in any economic decision concerning the future use of the land. The Federal income tax system should and does provide a positive incentive for the protection of wetland resources.

This administration encourages that and we are working with the Nature Conservancy, which is also a member of the POWDR group. We have several tax programs under consideration within the POWDR group. I am sure that The Nature Conservancy witness will speak to that today.

I want to emphasize again that we need to move on with the program. We need to stop subsidizing the destruction of the wetlands and, while our inventory is not yet completed, we can certainly make a start. Dr. Hester, Deputy Director of the Fish and Wildlife Service, and Craig Potter, Deputy Assistant Secretary for Fish, Wildlife, and Parks are here to join me in this testimony.

We are here to tell you what accomplishments we have made. Dr. Hester is here to suggest that we have inventoried 26 percent of the wetlands of America. One of the proposals and some of the witnesses will say let's inventory all of the wetlands before we make the commitment; that that is necessary to protect them. I beg the Congress not to pursue that line of reasoning.

Let's give protection to every acre we can protect in the meantime and then add to the inventory system. It has been 10 years in the making, and I think that is way too slow for the Fish and Wildlife Service but that is what we inherited.

Let's give protection to these areas known to be critical wetland habitat and then add to the system as it unfolds with our professionals defining and identifying additional wetlands that are so critical to us.

So, Mr. Chairman, I kind of rambled through a statement. I read portions and will submit the rest. The three of us submit ourselves to questions that other members of the committee might have.

Senator CHAFEE. Thank you, very much, Mr. Secretary.

I notice Senator Symms has arrived. He is a valuable member of this subcommittee.

Senator, if you have a statement, we would be glad to receive it now.

Senator SYMMS. I don't have an opening statement. I may have some questions, Mr. Chairman.

Thank you.

Senator CHAFEE. Thank you.

Mr. Secretary, as we have been saying, the big differences between our two bills is title I of your bill. How soon do you think that you will be able to move ahead under your title I?

In other words, you have put great emphasis on the fact that you shouldn't study and study, analyze and analyze, it leads to paralysis. When could they go into effect?

Secretary WATT. Very quickly. There is no such thing as immediately in government. The Fish and Wildlife Service has inventoried at least 26 percent of our Nation's wetlands. We would also want to consult with the State authorities and have public involvement. As soon as this public review was completed, I, then, as Secretary would put them into the system and they would have almost instant protection. I mean it would be within a few months rather than many months.

Senator CHAFEE. In other words, although you would have to eventually get on with the complete mapping, your view is that you move ahead with what you have got.

Secretary WATT. That is correct. That is the major point, I think, Senator.

Senator CHAFEE. I am not disputing this but it certainly is a fact that this gives a Secretary, you or anybody else, a great deal of power.

As you recall in the Barrier Islands legislation, we mapped those out and those maps were approved by Congress. So I want to forestall any criticism in the future and hear from you, your views on that, because here we are. We will be giving you power to map and then based on that power which would, without the detailed description of the qualifications of a barrier island that we had in that language, as you recall, we would not have such a careful description of what is a wetland, I presume.

Secretary WATT. I think your observations are correct. I am kind of looking to Steve, Gene, and Craig on this for help to go through it, but it seems to me that when we started on coastal barriers, Congress gave the Secretary the authority to designate them. We went through that process to go through and then you took your legislation and authenticated or validated or specifically accepted those definitions and designations. It shifted the responsibility from the Secretary to the Congress.

Am I correct that in the first go-around it was vested with the Secretary?

Senator CHAFEE. That is right. In the Reconciliation Act you only dealt with the flood insurance. You are right.

Secretary WATT. So this proposal is more similar to the Reconciliation Act in which Congress authorized the Department to designate undeveloped coastal barriers. Then we worked in concert and you really validated the work that was in progress with your act.

We would always ask that a congressional committee have full oversight on this and, frankly, any Secretary of the Interior, including me, would look with favor upon Congress coming in and validating what they had done by accepting or rejecting different components.

Senator CHAFEE. As I understand your exceptions and I appreciate what you said, you are getting shot at from the right and from the left on these. But roads, for example, would not be included in the prohibition of Federal funding to be spent on development of wetlands.

Isn't that true under your title I?

Secretary WATT. Roads?

Senator CHAFEE. Federally subsidized roads could continue to be built.

Mr. POTTER. The prohibitions under POWDR concerning the Department of Transportation would be largely FAA grants for airport planning and development and UMTA capital improvement and operating grants. Those would be prohibited. So the answer is yes.

Senator CHAFEE. In other words, those are the specific federally funded projects that are prohibited; but by not listing roads, roads could continue to be built.

Secretary WATT. There is an exception for the construction, maintenance, or repair of public roads that are essential links in a larger network.

Senator CHAFEE. Mr. Secretary, let me ask you about charging fees on the refuges. We have that in our legislation. I think we ought to give you that power. Obviously you have to use your judgment on what you charge for and what you wouldn't.

Do you have any idea of how much money you would pick up under that?

Secretary WATT. Our experience in the National Park Service might give some indication of what might be expected. In the Park Service we have 360-some units. We charge entrance fees at perhaps 60 of those units.

Unfortunately, the revenues that we generated at those 60-plus park units only produce about \$20 million and they go to the general treasury for food stamps, military purposes, and general government activities. I think that is wrong. We continue to ask Congress to change that law to no avail. We think that we ought to increase those fees.

By the way, the fees are at two of the national park units, Yosemite and Yellowstone, \$3 a carload. By statute we cannot change it regardless of how many are there. With the other 60-plus, it is \$1 or \$2 per carload. We have asked Congress to allow us to increase those fees and to dedicate those fees to the national park system. I am hopeful that sometime Congress will do that. In fact, we are again asking for it this year in our appropriations bill, and in the authorizing committees as well.

In this bill we would be dedicating the revenues not only from the duck stamps but of the visitation to the refuges to the Migratory Bird Conservation Fund. So it is the same philosophical commitment we are making.

Dr. Hester, you may want to comment on that. I don't think we have identified at which refuges we would charge for entry. Certainly it wouldn't be all of them but it would be some.

Senator CHAFEE. We are not asking you to identify the refuges here. I am just wondering if you have any estimate of how much money you would pick up.

Mr. POTTER. I think we have a ball park idea, in the neighborhood of \$5 million, the first go-around. That is very ball park.

Senator CHAFEE. My time is up. I will get back to title I and some questions I have later.

Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman.

Mr. Secretary, I commend you for your forthcoming attitude regarding the two pieces of legislation before us. I do have a number of questions regarding the legislation which you proposed.

First, if I could pursue one of the questions raised by Senator Chafee, the answer to which is not clear to me; that is, the speed with which presentation of these areas would occur.

As I understand your bill, section 103 would require the Secretary of the Interior to prepare maps of the components of the system. That is correct.

No reference is made there to the maps of wetlands that were begun under the National Wetlands Inventory project begun in 1979 and which is now, as I understand it, about 25 or 26 percent complete.

When you say you would begin right now, what areas are you talking about? Are you talking about the areas that have already been mapped and you would simply in your mapping begin with what is already occurred and complete the process?

Secretary WATT. That is correct. So we would immediately give protection to that 26 percent after the hearings and the State involvement. Then at the same time we would continue with our mapping and as each component unit came in, subject to public hearings and Governors' involvement, we would add it to a growing area of protection.

Senator MITCHELL. So would you, then, I assume, welcome any language to clarify section 103 to make clear that you intended to utilize the mapping that has already occurred and would build on that and that you do not contemplate commencement of a wholly new mapping system?

Secretary WATT. If it is not clear, we need new language because our intention is to do exactly as you have discussed it.

Senator MITCHELL. Mr. Secretary, at the bottom of page 2 and the top of page 3 of your statement, you state in one sentence that the cornerstone of the bill is the establishment of a POWDER system identifying significant wetlands.

Could I ask you, please, whether or not you contemplate any definition of significance to give guidance in that respect or whether you have in mind what would be a significant wetland?

Secretary WATT. We have wrestled with that question for endless hours and had different definitions in and out of the many drafts that were prepared. We finally came to the conclusion that it was better not to statutorily define what significant wetlands would be but rather leave it to the professional resource managers to work out in concert with the State officials and public involvement to determine whether it is a significant wetland in each particular instance.

We also found that there are many different definitions of "wetlands" used in the several statutes and regulations. I just finally came to the conclusion that rather than fight that through Congress it was best, again, to let professional resource managers develop that definition in an ad hoc situation as we develop the regulations for implementation of the legislation.

Mr. POTTER. Senator Mitchell, what we are trying to do here is recognize that we have a dynamic wetlands system, and that we

have differing areas of significance, depending upon the changes as they occur.

At the present time, we have just completed our wetland trends analysis which shows us that we are having particular problems with forested marshlands and inland marsh areas. In the future, there may be some other problem. The idea is that we are trying to recognize that it is a dynamic system. It is changing all the time. Rather than lock ourselves into a static definition, we would try to put ourselves in the position of being flexible in the future. We feel we need to rely on the professionals in order to be able to do that.

Senator MITCHELL. I understand the difficulty. The problem arises that depending upon the intention of the person involved, the word "significance" could be utilized in a restrictive manner to limit the quantity of wetlands placed under protection. I think that is a concern.

Let me go on to another question, Mr. Secretary.

You have stated very emphatically that we must stop subsidizing the destruction of wetlands and you are referring to subsidization and to further that objective, section 105 of your proposed legislation entitled "Limitations on Federal Expenditures" would do that. However, you, then, follow with section 106 which is the series of exceptions from the prohibition. And as you know, one of the concerns is that the exceptions in effect swallow up the prohibition.

Secretary WATT. It swallowed up a whole bunch of them.

Senator MITCHELL. When read in context, there isn't very much of a prohibition. That concerns me.

Let me ask you specifically, as I am sure you are aware, the U.S. Fish and Wildlife Service National Wetlands Inventory project concluded that 87 percent of the wetlands destruction that has occurred has occurred as a result of agricultural activities. And, yet, one of the exceptions to the prohibition in your legislation is agricultural activities.

If the Wildlife Service is correct that means right there in a single exception from the prohibition the majority of the problem will remain.

My question is, are you aware of that fact and what is your response of anybody raising a question about it?

Secretary WATT. I am aware of the role agricultural conversion plays in wetland losses. However, we are excepting only one category of agricultural programs, price stabilization commodity loans on those areas. There are other programs. But in spite of this, the fact is we are excepting a large agricultural program which may be a consumer of wetlands.

Why would you do that? When I was Director of the Bureau of Outdoor Recreation from 1972 to 1975, we, then, identified the most critical ecological loss as the loss of wetlands and candidly there has been almost a paralysis since then, because of agriculture and other lobbyists.

My objective is do what we can. If I were to come up here and propose to this committee that you prohibit all agricultural drainage of all wetlands, I wouldn't get a bill under any stretch of the imagination. It is just not going to happen. I would rather see a little bit of progress like I called for 10 years ago than see nothing happen for the next 10 years.

So do I want to be practical and flexible to get something done? You bet. I am not willing to take on the bigger issue. Frankly, I am not even sure it is good public policy to do so, but it is politically impossible. So I don't propose it. I am very much aware of it. I hope that that big loophole isn't grounds for doing nothing. That is a pretty candid answer, isn't it?

Senator MITCHELL. It is. My time is up.

I would like to pursue that a little bit further. I will do so in the next round.

Senator CHAFEE. Senator Symms.

Senator SYMMS. Thank you, very much, Mr. Chairman.

Mr. Secretary, on page 4 of your testimony, you mention the price of a duck stamp is to be raised to \$15.

How much is it now?

Secretary WATT. \$7.50.

Senator SYMMS. It raises \$14 million now as I understand you said.

Secretary WATT. It is now generally \$14 to \$16 million a year.

Senator SYMMS. You anticipate this will increase?

Secretary WATT. It will not quite double. The history of raising the duck stamp is that there is always a quick fall off in the number of purchasers and, then, in a couple of years it builds right back up.

Senator SYMMS. So you are not afraid it will have less people buying duck stamps?

Secretary WATT. We will have a short-term fall off and then it will come right back. We estimate that a \$15 duck stamp is equivalent to a box of shells. I forget whether I am supposed to say steel shot or lead shot.

We leave that to the States. But a box is about \$15.

Senator SYMMS. I didn't notice on our witness list, Ducks Unlimited, are they supporting either one of these pieces of legislation?

Secretary WATT. Yes. The Ducks Unlimited people played a very active role in the POWDR group, extremely active. I hope they are testifying.

Senator SYMMS. They are not listed as a witness.

Secretary WATT. I am not free to be speaking for any of those groups because each of the groups participating in the POWDR organization has the freedom to support any or all provisions or none of the provisions of my bill. But let me assure you Ducks Unlimited played a very active role and fully supports increasing the duck stamp fee.

Senator SYMMS. That is good. Being a member of Ducks Unlimited, I wanted to find out what my organization was up to.

Secretary WATT. Since you confessed to being a member, in my judgment, Ducks Unlimited is one of the great wildlife conservation groups in the country. The Nature Conservancy and Ducks Unlimited have done a phenomenal thing for this country. I cannot be more, if I could be more, I would want to be more emphatic in supporting the thrust of those two organizations. They are first class and deeply involved in these issues. They put their money where their mouth is and do things.

Senator SYMMS. Do I understand correctly that, and I apologize, Mr. Secretary, that I haven't studied the difference between S. 978

and S. 1329, but that either one of these bills is acceptable to the President?

Secretary WATT. We think our bill is much better.

The thrust is supportable by the President.

Senator SYMMS. Of either piece of legislation?

Secretary WATT. Yes.

Senator SYMMS. But you think that your bill——

Secretary WATT. It brings quicker protection to some lands than with the other bill.

Senator SYMMS. The other bill would have a bigger, wider thrust but might go slower?

Secretary WATT. That is right. There is a provision in Senator Chafee's bill that I need to put a caveat on. I think it calls for some substantial appropriations that would have some budgetary implications. I need to put a caveat in the record about how aggressively we would seek to appropriate funds to fulfill the authorization of this bill.

Senator SYMMS. I am not going to pursue the question much longer, Mr. Chairman. I just want to say to the Secretary that I think it is absolutely remarkable the progress that you have made with the Interior Department in the past 2½ years.

I really want to compliment you for it. In my State, as you know, we are 64 percent owned by the Federal Government of which about a third of that ownership is under the Interior Department's management through BLM.

We have had progress and public acceptance of the BLM is remarkable from the people who use those lands. There is a much better atmosphere than there was in the past. The Park Service has made enormous headway with the simple things like sanitation which are so critical to good environment and have been overlooked for so long. I certainly appreciate that.

In our national parks, we have seen remarkable changes in a very short period of time. Here in this area, I certainly am supportive of the continuation, Mr. Chairman, of the thrust of what you are trying to do with the wetlands. I think it is important that we protect our wetlands. I think it is important that we continue to try to pay very special attention to it.

I think, Mr. Secretary, you are not given credit for what you are doing now but I think some day, when the historians write of this period of time, that you will go down as one Secretary of the Interior who made enormous progress toward a fundamental thrust of the use of our resources and of a long-term conservation of those same resources.

I think in time, even some of your most strident critics, who may criticize you for political reasons, but not for environmental reasons, are going to come to appreciate what you have done in terms of the contribution to this country and to those same lands that you are responsible for.

I am sorry I have to leave the hearing but I have a special order on the floor. So I have to depart.

Senator CHAFEE. We appreciate your coming, Senator, and look forward to your assistance as we proceed with this legislation.

Mr. Secretary, there was started in 1976 an acquisition priority list for wetlands. Where does that stand? Do you expect that priority list to change significantly as you review it?

Secretary WATT. Let me ask Dr. Hester to supplement the answer here. We are constantly reviewing these priorities. The Migratory Bird Conservation Commission will be meeting, August 2. I continue to chair those important meetings. We review and adjust priorities as Craig Potter indicated in an earlier answer.

Priorities change. For example, we need the wooded wetlands and we need to be tougher in our priorities. So we are continuing those at this time.

Dr. Hester ought to supplement that.

Dr. HESTER. Mr. Chairman, within the Fish and Wildlife Service, we have a group right now looking at that very question. We are looking at a wetlands conservation strategy, both from the standpoint of priority for acquisition and other things that we might do to preserve those wetlands. By the end of this year, we will have our task force recommendation to the Director about how we would modify the 1976 target.

Senator CHAFEE. Are you currently spending the money you have through the various licenses and so forth; are you spending that money?

Dr. HESTER. Yes, sir.

Senator CHAFEE. For wetlands?

Dr. HESTER. Yes, sir.

Senator CHAFEE. How many acres, roughly, do you acquire a year, not precisely?

Mr. POTTER. Mr. Chairman, it is running between 30,000 and 50,000 acres a year, split between various forms of ownership, easement, and so forth. I think in 1984 we are projecting 47,000 exactly.

In 1982, we took easements on about 24,000 acres, about 13,000, a little more than 13,000 acres of leases and then there was fee acquisition of more than 8,000 acres. We also received donations of 4,600 acres.

Senator CHAFEE. Why, Mr. Secretary, in your legislation do you press so for a State duck license and the money from that to be counted? Suppose the States choose another route; they make straight appropriations for their general funds for the matching; that is, the 1 to 3. What difference does it make?

Secretary WATT. We have discussed that issue. I am not sure it does make a difference. I pursued a program to encourage State duck stamp programs because it has been so very successful on the national level and it involves the beneficiary. I try, from a philosophical commitment, to get those who are benefiting and who are willing to participate in this program to put up the money.

If the States choose to base apportionments on direct appropriations for wetlands conservation, that might be appropriate. Governor Bob James of Alabama is cochairman of the POWDR group. He pushed for the appropriations.

In Alabama, they use some of their duck stamp receipts or appropriations, whichever it is, and they make a direct one-check payment to Ducks Unlimited for their conservation efforts in Canada. I think that is an interesting and unique way of handling it.

I like to involve as many people as we can. The duck stamp program helps develop the conservation ethic with hunters that is helpful and many of the States, about half of them, already, have a stamp program. The matching program could go either way. I wouldn't be offended by State appropriations being included in the match 3 for 1 out of the land and water conservation fund.

Senator CHAFEE. Mr. Secretary, on June 20, I wrote you about this hearing and I asked that a Department legislative report on my bill be prepared and submitted.

Would you be good enough to supply such a report with the technical comments and suggestions for the record?

Secretary WATT. Be glad to do that. [See p. 60.]

Senator CHAFEE. We want to know, for example, if the inventory we asked for in our legislation can be completed in the timeframe suggested. Both of us are talking inventory. But it is my belief, and you can correct me with this, that it is possible for the Department to move faster on compiling its inventory than has been done in the past; is that correct?

Secretary WATT. I don't know the answer to that.

Dr. Hester, this program has been underway several years. Why hasn't it gone faster? Is that the question? Or could it go faster?

Senator CHAFEE. I am not asking that it be rushed through in a sloppy fashion or anything like that. It is a very important program. But it just seems to me that it is possible to get on with it faster than it has been.

Dr. HESTER. It is possible to speed it up. The cost would be greater, not just simply proportionately greater; that is, if it is done in half the length of time, it would not cost twice as much, it might cost more than twice as much because of a number of technical factors about the expertise that would have to be involved and the equipment and so forth. It could be speeded up.

Senator CHAFEE. How soon do you think you would be completed, proceeding normally, and then putting a little more effort into it? How fast could it be done?

Secretary WATT. By 1988, we anticipate having the priority areas done. There will always be some more to be done, especially in some parts of Alaska and so forth. But we will have essentially what we need by fiscal year 1988.

If we were to speed that up, try to do it in the next couple of fiscal years, it would cost considerably more than that. We could provide you a figure. It would be in the neighborhood of probably more than \$30 million.

Senator CHAFEE. Are you currently trying to move quickest on those areas that are most threatened?

Secretary WATT. From the very beginning, when we started the wetlands inventory, we chose those priority areas.

We also considered those areas where we could work the year round in developing the technique. But, then, we chose the areas in which you had the greatest amounts of wetlands and those wetlands that were in the greatest danger.

Senator CHAFEE. I would say Florida fell right in that category.

Secretary WATT. Florida, perhaps, did both. We were able to work there year round.

Mr. POTTER. Mr. Chairman, there is a limit in terms of our capabilities here because of the availability of recent aerial photography. I think the lower 48 is about 43 percent completed now in terms of photography. We do have a limit there.

Secretary WATT. Ducks Unlimited has entered into a contract with NASA to see if we could tie into the Landsat IV space photography in identifying wetlands. We have some questions, our professionals do, whether the resolution of Landsat IV is specific enough to help us, but we are looking at it. Our bill would allow us to accept that type of mapping information or any other information that a State or any other entity might give to us.

So, through the POWDR initiative, we have innovative ideas coming into focus and any way we can facilitate the mapping, whether by Landsat or our own program, we are able to do it.

Senator CHAFEE. I see the distinguished chairman of the full committee is here.

Senator Stafford, if you have an opening statement, this would be an appropriate time.

Senator STAFFORD. I don't, Mr. Chairman, but I thank you for the opportunity and the opportunity to say welcome to Secretary Watt and his associates.

Senator CHAFEE. Thank you.

Senator Mitchell.

Senator MITCHELL. Mr. Secretary, when the time ran out during my previous questioning, we were discussing the prohibition on certain Federal activities and the exclusion from the prohibition which in effect permits the continuation of those activities.

You indicated you wanted to do a little bit now rather than wait and do nothing.

I commend you for that. But I think it is important to identify just how little we are doing. If you are calculating the amount of wetlands destruction that is occurring from those activities that are, in fact, prohibited by the prohibition in section 105, can you tell me what percentage of the total destruction that is occurring will then be effectively prohibited?

Secretary WATT. No, I cannot.

Senator MITCHELL. Certainly you know it is less than 13 percent because agriculture activities, which are excluded from the prohibition and, therefore, continue to take up 87 percent.

Secretary WATT. The argument that we are proceeding to develop here is one of those which asks, Is the glass half empty or half full?"

You can pursue that argument to show how little impact POWDR legislation would have; I would choose to say that it is 100 percent more than is now being done. I am the positive guy. I am saying that the best package that has been presented to the Congress in the last decades has been the POWDR bill. POWDR is the first real initiative on this subject that has been forward for decades. I come at it believing it is a great deal better than what we now have.

Is it as good as the optimum proposal a theoretician could come up with? Heavens, no. But it is practical.

Senator MITCHELL. I commend you for the initiative. But I also take at face value your words at the outset that you don't regard your proposal as the ultimate or only one and welcome suggestions.

Secretary WATT. That is right.

Senator MITCHELL. I think, in order to do that, it is important to understand just what it would do and would not do. So any questions are not asked in the form of criticism but rather merely to attempt to identify as precisely as possible what the effect would be and then to determine whether or not you can add a little bit to your little bit and perhaps do even a little bit more.

Secretary WATT. Our presentation, and you are right on target, is unorthodox compared to traditional Government presentations. Traditionally, Government—the administration—comes forward, and gives you all these figures of what they are going to accomplish.

I refuse to do that in this instance. They are just wild guesses at best. In any event, in our 2½ years, we have never sought to promise more than we can deliver. So I have not put an acreage promise or dollar promise on any of this. It is a conceptual approach. It is better than what we now have. I have not put an acre goal out there. I am unraveling some horrendous Government problems because past Department of the Interior people came forward and told Congress they were going to accomplish unrealistic goals. They built public expectations to levels that are euphoric but not realistic.

POWDR is better than anything else that was proposed prior to its submission.

Senator MITCHELL. Along those lines, one of the provisions in your bill is, as I understand it, wetlands must be greater than 5 acres in size in order to be included in the POWDR system. As you know, the Fish and Wildlife Service estimates that over 80 percent of the prairie potholes which are the No. 1 priority for protection by that Service are less than 5 acres in size. Could you tell us, please, how the figure of 5 acres was arrived at, and would you be amenable to a different figure if it included some of these high priority areas in protection?

Secretary WATT. The 5-acre figure was a Jim Watt figure. We had a group proposing 10 acres and one proposing 1 acre and I just said let's go with 5. It made both groups upset.

Senator MITCHELL. So if we say well, one has said 5, another said 1, so why don't we take 2 or 3, would you object to that?

Secretary WATT. No. There becomes an administrative problem, of course. The smaller you get, the more difficult it becomes. At some point I would guess there is probably an administrative problem. I don't know what that point is, candidly. We are just getting things out on the table. That figure is not sacred at all.

Senator MITCHELL. That is one area where you would be willing to have some kind of further discussion?

Secretary WATT. That is right.

Senator MITCHELL. Mr. Secretary, one statement you made in response to Senator Symms' questions concerned me. That was, you said you want to set forth the caveat as to, and I think your words were, how aggressively we would seek appropriate funds to implement the legislation. I wanted to get perhaps some clarification on that because you have stressed here today the importance of pro-

ceeding promptly as one of the advantages of your proposal. I would like to ask you a twofold question.

First, since you indicated that you would proceed with the further mapping of the system, will you commit yourself to request the funds necessary to complete the mapping?

Secretary WATT. Absolutely.

Senator MITCHELL. And, second, can you expound a little bit on the question of how aggressively you would seek to appropriate funds to implement this legislation? That is a very important aspect, as you know.

Secretary WATT. Yes. It is. Senator Symms' question related to the differences between our bill and the Chafee bill. Excuse me for not being up to speed on this. But the Chafee bill calls for an appropriation of \$50 million?

Senator CHAFEE. \$75 million.

Secretary WATT. \$75 million per year for 10 years is an enviable goal, but in reality I cannot commit to it when we have a \$200 billion deficit each year. It becomes a priority setting issue. I have in the National Park Service a backlog of \$3 billion of authorized land to be acquired. Some of that has been authorized and subject to acquisition for over 50 years. We are appropriating roughly \$60 million a year for that.

Just to give you a comparison, to give you some years, the first year of the Carter administration, they appropriated \$367 million for acquiring parklands. The fourth year of the Carter administration, they appropriated \$80 million. We cut that by approximately one-sixth. I don't find any criticism with these requests because you have to set priorities. I have asked to maintain an appropriation for parkland acquisition at roughly that \$60 million figure.

Congress first gave me twice that, the second year they gave me more nearly what I asked for, in round figures. This third year they are giving us more than we have asked for.

In my judgment, wetland acquisition has a higher priority than some of these parklands, though not all of them. Some of them are threatened with the bulldozer and that type of thing. We need to move on. But I have the political pressures to make acquisition moneys available for parklands, for refuge lands, for BLM lands, recreation lands, and for wetlands, and, candidly, I would like to be spending several hundred millions of dollars per year to acquire the additional parklands we need and the additional refuge lands plus hundreds of millions for wetlands.

It is just not in the cards.

So am I fudging on the question? Yes. Because I have to make those balances. How much money can the Federal Government afford to appropriate for additional land acquisition, whether it be Park Service, refuge, or wetlands, and what should be the division? What should our recommendation be to the Congress, and what will the Congress do? I just didn't want to be making promises that I was endorsing Chafee's bill and then be criticized for not coming across asking for full appropriation of \$75 million.

Senator MITCHELL. Let me ask you about a specific appropriation. As I understand it in the three previous fiscal years the Department of Interior has requested no funding, no appropriations for

the existing land and water conservation fund, State grants program. Is that correct?

Secretary WATT. That is correct.

Senator MITCHELL. You have proposed that there is a 3 to 1 matching program authorized here. That obviously is not going to mean anything if the succeeding funding requests are for nothing. You can make it 3 to 1, 30 to 1, 100 to 1, it doesn't make any difference if you don't have any money for it. Are you prepared to committing yourself to requesting the amount of appropriation necessary to match the State fund?

At this time it would be about \$16½ million.

Secretary WATT. Yes, we would, because we think this wetlands acquisition program has a higher priority than making the money available to the States for the development and acquisition of the parklands. When I came on, my figures may be rusty on this and I will correct it for the record, but when we came on there was a huge backlog of appropriated moneys for the State grant program that hadn't been matched and taken by the States. The States have been pretty effective in whittling that big backlog down. But the State governments are having some of the same problems that we have in our National Park Service, that is, they had more parks than they were able to take care of.

So we have doubled and quadrupled our commitment to taking care of our parks that were neglected prior to our arrival. So it is that balance situation. There has been a lot of criticism that we didn't seek money for the State grant program. Congress put in \$75 million last year and I don't know what they are going to do this year. But in my judgment a matching program on a three to one basis from the land and water conservation fund for wetlands acquisition would have a higher priority than the 50-50 matching program for the development and acquisition of State parks.

Senator MITCHELL. The time is up. There are other witnesses. I have a number of other questions which I would like to submit in writing, Mr. Secretary, and ask that they be answered in writing.

Secretary WATT. I would like to add one more sentence to my answer. I would like to do both. It is the question, the tough question, of priorities. You folks face it too as you deal with the appropriations questions.

Senator MITCHELL. First, Senator Chafee has already touched on the questions of some States having duck stamp programs and others not, 24 have them, 26 do not. The important point to bear in mind I think is there is no relationship between the existence of a duck stamp program and the need for wetlands preservation in a given State. For example, the State of Louisiana is losing between 30 and 40 square miles of wetlands each year and there is an urgent need there but there is no State duck stamp program. So it seems to me that the point Senator Chafee made that if you would be willing to match State direct appropriations you may be able to more precisely target the funding to the need whereas adopting the existence or nonexistence of the duck stamp program as the criterion means that you are allocating funds without any relationship to any priority of where needs may be.

Secretary WATT. That is fair.

Senator MITCHELL. I would urge that upon you.

Secretary WATT. It is a fair comment. Governor Treen of Louisiana is on our POWDR group and in fact our last meeting was in New Orleans. He attended a portion of the meetings. We have had that specific conversation with Governor Treen. I think it is fair to say, that legislation authorizing the duck stamp program in Louisiana would be received less warmly by the Louisiana Legislature than would be a direct appropriation.

Senator MITCHELL. I just would conclude with one comment. It is tangential to this hearing. But I was very impressed by your statement about paralysis by analysis in Government, too much studying and that we have to act now on the basis of the information that we have and study more later. I would simply ask you that if some time you are sitting in a cabinet meeting or cabinet council meeting and the subject of acid rain control legislation comes up, which I am the author of, I hope you will remember those words and perhaps repeat them at that meeting.

I think they are very, very forceful, apt statements in that area as well.

Thank you, Mr. Secretary.

Senator CHAFEE. I think it is amazing that Senator Mitchell showed such restraint to hold that until the end.

Let me just say this: In your testimony, Mr. Secretary, you have been very candid about the fact that your bill does not do a great deal of things. It is a step forward. The way to go in the long journey is to take the first step. However, I would just mention this on the other side. That in any legislation it takes a certain amount of push and shove to get it through. Sometimes I think we fail by not taking bold enough steps.

Obviously it is a question of judgment. I think perhaps we can be a little more adventuresome here than you have suggested although I recognize the pitfalls as you have so wisely pointed out. But if we are going to do it, we might as well get as much as we can. How much of that I don't know. We will be looking forward to your counsel as you proceed here. We want to thank you and Dr. Hester and Mr. Potter for being here today.

Thank you.

Secretary WATT. Thank you very much.

Senator CHAFEE. The next panel will consist of Mr. Young, Mr. Permar, and Ms. Sharon Stewart. If you will each come forward, Mr. Young, if you would sit on the extreme left, Mr. Permar in the middle, and Ms. Stewart on the extreme right as you face us.

Ms. Stewart, we welcome you back. We have seen you here several times.

Ladies and gentlemen, we are going to have to move right along. We have two other panels after this. We want to have an opportunity to hear what they have to say. At the same time we want to be through by no later than half past twelve.

So we will give each panel 25 minutes. If each of you would summarize your statements if possible, we will give each witness 5 minutes. We will have time for questions of the panel, no more than 5 minutes.

So why don't you proceed, Mr. Young?

STATEMENT OF LAWRENCE YOUNG, NATIONAL ASSOCIATION OF
REALTORS

Mr. YOUNG. Thank you very much, Mr. Chairman.

With your permission, I would like to summarize my testimony and I have already submitted the written document to you.

Senator CHAFEE. I will say this to everybody. Everybody's testimony will go into the record.

Mr. YOUNG. In an effort to be brief, I will summarize basically the comments that we have.

I am Lawrence Young, a realtor from South Padre Island, Tex., and am really here on behalf of some 600,000 members of the National Association of Realtors. The National Association of Realtors is opposed to the enactment of the Protect Our Wetlands and Duck Resources Act. I think it is known as S. 978 and more commonly known as the POWDR bill. Our reasons for opposing the POWDR include the following:

No. 1, the POWDR legislation will deny private property owners reasonable use of their land by prohibiting almost all forms of Federal involvement for development. No. 2, the POWDR bill will not only deny reasonable use of private property, but it will also adversely affect local communities with wetlands areas. The legislation will override local land-use planning and management. In addition, it will retard growth opportunities, thus having a detrimental effect on local economies. Consideration should be given to the effects such a dramatic shift in Federal policy will have on the tax base of local communities. The public benefit derived from denying development opportunities may well fall short of the benefits gained from allowing reasonable development of wetland areas.

Three, while we recognize that there are wetlands of significant environmental value which need to be protected, the POWDR bill is both premature and excessively sweeping in its application. POWDR establishes the Protect Our Wetlands and Duck Resources System which is to be comprised of underdeveloped wetlands of 5 acres or more. It directs the Secretary of the Interior to identify wetland areas to be included in the POWDR system and at the same time prohibits any new Federal expenditures in system units.

Yet, the legislation contains no definition of wetlands nor does it clearly specify the type of wetlands to be designated. The Interior Department estimates that 86.8 million acres of wetlands are in private ownership. Conceivably, then, thousands of private landowners with holdings on lakes and streams throughout the country could be affected by this legislation. Congress should not take such dramatic action as that proposed in the POWDR bill without first knowing which areas of the country will be impacted.

Fourth, POWDR assumes all wetlands areas are unsuitable for development. Yet, development of wetland areas does not necessarily pose a risk to the surrounding areas or to the wetlands themselves. Although some wetland areas may require protection, this all inclusive legislation is excessive in restricting development for all undeveloped areas.

From an environmental perspective, the bottom line is acquisition. If Congress determines the remaining developable wetlands are so essential to preserve in a natural State, the only equitable

and environmentally sound alternative is acquisition. As an association, we generally do not support acquisition; however, in this case, acquisition is more just than the indirect denial of property rights and land-use control that the POWDR legislation would establish.

Mr. Chairman, although we are concerned about the ramification of S. 1329, the National Association of Realtors considers the Emergency Wetlands Resources Act to be a more balanced approach to the wetlands issue than the POWDR legislation. The proposed legislation calls for a substantial increase in funding for Federal acquisition of wetlands. We are concerned about the budget impact of this provision which would authorize the expenditure of as much as \$1 billion over the next 10 years. At least that is an estimated figure.

Our association does not generally support Federal acquisition of private property. However, if acquisition is considered essential to wetlands, we urge acquisition. This subcommittee should establish a wetland acquisition policy which insures a process responsible to private property owners who own approximately 80 percent of the U.S. wetlands. In establishing a responsible wetlands acquisition policy, we would recommend the following: No. 1, a systematic review of environmentally sensitive wetland areas should be conducted to determine which lands are actually essential for acquisition and then set priorities for acquiring only those essential lands; No. 2, a time constraint should be implemented to insure timely acquisition between the authorization of a Federal acquisition and actual appropriation of funds for purchasing the land.

I think a while ago we heard that some lands have been designated for acquisition for 50 years and they have yet to be purchased. Alternatives to fee-simple acquisition should be considered for appropriate tracts of land.

S. 1329 establishes the deadlines for completing the national wetlands inventory project and calls for a trend analysis of wetlands development. While inventory and study of wetlands might be appropriate, we consider it imperative that wetland owners be cognizant of Federal actions to include their property in this inventory. Based on our experience with the mapping process of coastal barriers, we believe affected property owners must be informed of the inventory and should be permitted to participate in any mapping process from the earliest stages. Property owners should be personally notified of Government actions affecting their property.

In a recent Supreme Court decision, Justice Thurgood Marshall stated, "Notice by mail or other means as certain to insure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party."

In addition, S. 1329 requires an analysis of the environmental and economic impact of eliminating or restricting future Federal expenditures and financial assistance in wetland areas. We believe the study must consider the impact of such action on private property values and on the economies of affected local communities. We strongly recommend that this aspect of the study be written into the legislation.

The National Association of Realtors is interested in potential tax incentives which would encourage private owners to donate title to wetlands or easements for conservation purposes. Increasingly, owners of wetlands would like to donate their holdings to the State or Federal Government or to a nature conservancy, but they have been unable to obtain the appropriate tax incentive. Therefore, we encourage Congress to explore the idea of providing more realistic tax incentives to those property owners who are willing to donate wetlands for preservation purposes.

In summary, we urge this subcommittee to oppose S. 978. We consider S. 1329 to be a better alternative to the wetland issue. However, we recommend the following: No 1, a timely and prudent acquisition process which allows for the purchase of only essential wetlands purchased from willing sellers; No. 2, adequate notification and allowance for comment of property owners affected by the wetland inventory and analysis; No. 3, a wetland study which analyzes the impact of withdrawing Federal expenditures and financial assistance on property values and on local community economies; and, No. 4, more realistic tax incentives to encourage willing donation of wetlands for conservation purposes.

Again, thank you, Mr. Chairman, for the opportunity to express the National Association of Realtors' views on these important issues. I am prepared to answer any questions you might have.

Senator CHAFEE. Thank you very much, Mr. Young, for your testimony. We appreciate that.

Mr. Permar.

STATEMENT OF MARK PERMAR, AMERICAN LAND DEVELOPMENT ASSOCIATION

Mr. PERMAR. Thank you, Mr. Chairman. My name is Mark Permar.

I am pleased to be here on behalf of the American Land Development Association to present testimony on the Protect our Wetlands and Duck Resources Act of 1983 [POWDR], S. 978 and S. 1329. The American Land Development Association represents leading national and international companies which develop recreational, resort, and residential real estate, including vacation homes, condominiums, resort time sharing, planned unit developments, new and retirement communities, and recreational vehicle parks and campgrounds. Our membership includes both real estate development subsidiaries of major corporations as well as smaller privately held development companies.

Senator CHAFEE. You are going to have to move right along if you are going to cover this.

Mr. PERMAR. Nearly everyone conversant with the subject recognizes the value of our Nation's wetlands. They are biologically and economically important to all of us and the proper management of this natural resource is a matter which should be given a thorough review.

The American Land Development Association is concerned about S. 978 in its present form for the following reasons: First, the implementation of the bill may result in an inconsistent Federal policy in many wetland areas; second, this bill extends the concept

of the Coastal Barrier Resources Act prior to any determination by the Department of the Interior regarding the effectiveness of the act; third, the bill provides for unnecessary restrictions regarding the use of wetlands and overlaps with existing State and Federal programs; fourth, wetlands which would be designated as a result of the legislation are defined only in broad and vague terms; and fifth, the bill does not take into account the vested rights of property owners who have expended funds and received Federal permits for projects which may not be possible subsequent to the passage of the legislation in its current form.

The POWDR bill would eliminate all Federal assistance—including Federal flood insurance—for undeveloped wetlands of 5 acres or more. In many areas of the country, such as Louisiana, continued growth must, necessarily, occur in undeveloped wetlands. Recognizing this fact, the Federal Government has constructed levees for flood control purposes and has issued Federal permits for drainage and other purposes to accommodate growth into these areas.

In our view, it does not seem consistent to spend millions of dollars on flood control only to eliminate the national flood insurance program within the affected areas.

Moreover, if the goals of the legislation represent sound public policy, we wonder why the exceptions to the prohibitions outlined in the bill are so numerous. In fact, land development activities have accounted for a relatively small percentage of wetland losses. Ironically, when we review the legislation, it appears the more significant causes of wetland losses are exempted from the legislation.

As you know, the Coastal Barrier Resources Act established the precedent of designating areas for the purposes of prohibiting most forms of direct and indirect Federal financial assistance. The Department of the Interior has designated those areas to be affected by the act and has begun a study of those areas in order to determine the effectiveness of the act in accomplishing its goals.

There has been much speculation regarding the potential effects of the Coastal Barrier Resources Act on the designated areas. Some have felt that, since Federal flood insurance would not be available within the designated areas, development was not likely to occur. However, others have indicated that, since private insurance companies can provide flood insurance for only high-rise-type commercial structures, development will not only continue to occur in the designated areas, but will occur at higher densities than might otherwise be anticipated.

Regarding limiting the Federal Government's financial exposure in the designated areas, supporters of the Coastal Barrier Resources Act claim that eliminating the availability of Federal flood insurance will reduce the Government's operating deficit in these areas. However, should a flood occur within designated areas, the combination of disaster assistance and tax deductions could far outweigh the exposure attendant to the national flood insurance program.

At this stage, we do not know whether high density development will occur as a result of designation. We do not know that Federal dollars will be saved. We also do not know how communities surrounded by undeveloped wetlands will be affected by these prohibitions.

In any event, as previously mentioned, the Department of the Interior is currently engaged in a study which will aid in determining the effectiveness of the coastal barrier concept. Moving forward with the designation of undeveloped wetlands prior to the completion of this study would be premature.

As you know, both the State and Federal Governments have established programs for the sole purpose of evaluating development activities affecting wetlands. In 1972, the Clean Water Act was amended and section 404 of the act provided for the strict regulation of activities affecting wetlands. This program is carried out by the Army Corps of Engineers. In addition to this Federal program, the States' coastal zone management program also has jurisdiction over wetlands.

While we feel that there are still a number of problems associated with these programs, particularly the 404 program, they do at least provide for a detailed, site-specific environment review of a proposed activity affecting wetlands. Under these programs, numerous local, State, and Federal agencies, as well as interested individuals, may comment on a proposed action affecting wetlands.

Thus, any specific proposal will, necessarily, be studied in detail and a permit issued only if the proposed activity meets all the requirements of the 404 program and the States' coastal zone management program. Indeed, prior to the issuance of Federal or State permits, appropriate mitigation is often required and these mitigation measures can increase both the extent of wetland acreage and the quality of wetland habitat.

Since many projects currently planned for undeveloped wetlands may not be possible in the absence of Federal programs such as the national flood insurance program, these beneficial mitigation measures will not be possible.

The legislation in its current form calls for the designation of undeveloped wetlands that are environmentally significant. We feel that this definition is much too broad to be applied in any meaningful way. The bill contains no definition of undeveloped, nor does it provide for any definition of environmentally significant. As you may know, there are numerous definitions and classifications of wetlands, and the lack of specificity in the statute with respect to these definitions will inevitably result in designations that may include more areas than intended or omit areas which should be included. We feel that these definitions are too important to ignore at this stage and could result in inequities during the designation process.

Especially in areas where continued growth cannot occur except in wetland areas, it seems to us that the vested rights of property owners in these areas must be taken into account. In many cases, areas which may be designated as undeveloped wetlands have been the subject of extensive planning and permitting processes carried out by property owners. Anyone familiar with the development process can tell you that substantial funds are expended prior to development during the planning and permitting process. Numerous local, State and Federal approvals are required before development can take place in many areas. We would recommend that those areas for which significant funds have been expended during the planning and permitting process be exempted from designation.

With respect to S. 1329, we find it to be a more palatable approach to wetlands conservation when compared to POWDR.

Specifically, we support the immediate thrust of the bill, that is, acquisition of important wetland areas. We have continually maintained that acquisition is the most sound environmental approach while also providing just compensation for affected landowners. Although our investigation of this area leads us to believe that a funding level of \$75 million annually for such purposes, as envisioned by your bill, may overload both Federal and State agency resources, we are however in support of a moderately increased funding level for acquisition purposes.

With respect to the study authorized in title IV, our major concern is that following completion of the inventory and trend analysis the POWDR-like blanket limitations on Federal programs and expenditures in wetland areas would once again be considered. As we have emphasized previously in our comments on the POWDR bill, S. 978, this conservation approach is in our opinion misdirected and ineffective public policy.

Having said this, we in the development community to some extent welcome trend analysis of wetland loss. For as many experts in the wetland field realize, land development activities for housing and recreation accounts for a relatively small percentage of wetland loss. As a matter of fact, our industry is one of the few wetland users that can mitigate its impacts and in many cases actually increase wetland habitats in the course of a project.

In summary, although we are somewhat skeptical of the ultimate purposes of the study, we do believe trend analysis of wetland loss will uncover the fact that our industry is a relatively minor contributor to wetland loss.

Moreover, S. 1329 appears to recognize the importance of evaluating the effectiveness of the Coastal Barrier Resources Act before charging ahead and applying the Federal program withdrawal concept to wetlands. We believe it is questionable if the true objective of the Coastal Barrier Resources Act will be realized through its provisions.

In summary, we cannot support the passage of the Protect Our Wetlands and Duck Resources Act in its current form. We do, however, recommend: First, continuation of Federal programs which provide for the acquisition of important wetlands; second, consideration by Congress of tax incentives for individuals interested in donating wetlands for conservation purposes; third, delay of the extension of the coastal barriers concept to additional areas until the Department of the Interior has completed its study of the effects of the Coastal Barrier Resources Act; fourth review of the 404 permitting program; and fifth, continuation of the coastal zone management program.

Mr. Chairman, thank you for the opportunity to share with you our concerns and I hope that you will find our comments useful in your consideration of this legislation. I would be pleased to answer any questions that the subcommittee may have.

Senator CHAFEE. Fine. Thank you very much for your testimony, Mr. Permar.

Ms. Stewart.

**STATEMENT OF SHARRON STEWART, MEMBER, NATIONAL
ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE**

Ms. STEWART. Mr. Chairman, members of the subcommittee, good morning.

NACOA appreciates this opportunity to testify. Our position is presented in terms of national wetlands policy because our review showed that wetlands acquisition, legislation, regulation, Federal agency programs, and national treaty obligations, have all traditionally included both inland and coastal wetlands. We also have positions on both the POWDR bill, S. 978, and on Senator Chafee's bill, S. 1329. I won't repeat a lot of facts and figures you already know about wetlands values and their losses, but let me point out a few of our basic findings. Despite decades of acquisition, only about 10 percent of the Nation's wetlands are under Federal ownership. Regulation under the Clean Water Act does not address many activities that cause losses. Tax incentives for wetlands protection are weak—with legal costs of title transfer sometimes outweighing the writeoffs—and the Tax Code includes strong incentives for some activities that cause wetlands destruction.

Let me summarize NACOA's recommendations.

With about 90 percent of the Nation's wetlands under private ownership, overemphasis on acquisition is impractical. It should be focused on high priority areas.

Regulating private landowners' usage of wetlands should be balanced with other approaches so that regulation can be minimized.

The concept of prohibiting Federal funds for development in wetlands areas has merit but is premature. I will explain why we think so in a minute.

Tax incentives for landowners donating property or easements should be most strongly emphasized. This puts more acreage under control of Government or private conservation groups at less cost than acquisition, and it encourages rather than imposes usage controls. National economic benefits from wetlands protections, such as increased fisheries export potential and reduced flood disaster claims might well outweigh the loss of tax revenues.

Wetlands regulation should be broadened because the Clean Water Act covers only discharge of dredge and fill materials. New or amended legislation should cover other causes of wetlands losses such as excavation, clearing and draining.

Funds should be authorized to accelerate the national wetlands inventory, and to attach public value to various wetlands based on their contribution to flood protection, commercial fishery habitat, et cetera. The inventory should include priorities assigned to all wetlands to be used in making decisions concerning acquisition, regulation and tax incentives.

NACOA has the following positions on the POWDR bill and on S. 1329. On POWDR, the title I concept of prohibiting Federal funds for development in wetlands is premature because of the incomplete status of present wetlands maps. We are also concerned that the bill will be ineffective because of the extensive list of activities that are exempted. We support the title II extension of the wetlands loan fund and the title IV proposals for increased acquisi-

tion funds through entrance fees to refuges and increased costs for duck stamps.

We support Senator Chafee's bill, S. 1329, including extension of the wetlands loan fund, and title II increased funds for wetlands acquisition from four proposed sources. We feel that these funds would represent an appropriate level of Federal investment in acquisition. We also support the title III transfer of funds to States for acquisition, and title IV acceleration of wetlands mapping and a study of management alternatives.

We do recommend two modifications to the bill: That a priority rating for wetlands based on their public value be added to the inventory process; and that the Department of the Interior be required to do its wetlands inventory—especially its valuation and priority ratings—in consultation with the EPA, the Army Corps and NOAA.

NACOA's wetland panel met yesterday and approved several additions to this position dealing with tax incentive approaches and Federal agency responsibilities for wetlands programs. If they are approved by our full committee this afternoon we would like to forward them for inclusion in today's hearing record.

That concludes my formal remarks, Mr. Chairman. I would be pleased to answer any questions.

Senator CHAFEE. I want to thank each of you for your testimony and each of you touched on the tax incentive proposals. I would be interested in those proposals. It so happens that on the full committee there are five Senators who also sit on the Finance Committee of course including Senator Mitchell. So I think each of us would find the specifics on the tax incentive legislation helpful.

It has also seemed to me that the tax incentive features get more to the real estate tax which is obviously a local tax than to the Federal income tax features.

If you want to give your land to the Federal Government, sure, you may have a rare situation where the donation is more expensive because of the deeds that have to be drawn and so forth than the value of the land. I think that would be unusual. But it seems to me you are talking about gifts. You are talking about giving it outright in fee, are you, to the Federal Government? Is that what you are discussing? You were discussing easements as well?

Ms. STEWART. Yes, sir.

Mr. YOUNG. I think easements as well.

Senator CHAFEE. When you are doing easements that is reducing the local government's income. It is more of a local problem than it is a Federal income tax problem. Do you agree with that? Do you think that is inaccurate?

Mr. PERMAR. I think you are correct. In practice that is true.

Senator CHAFEE. Can you speak a little louder?

Mr. PERMAR. I would agree with you that in practice that is what is happening. I believe also that we are all saying that this is another tool to achieve the goals stated.

Senator CHAFEE. I must say I have some trouble with both your testimony, Mr. Permar, and Mr. Young, that somehow the Federal Government is not entitled to withhold spending Federal funds on private property that is destructive of something that is in the Nation's interest. I can't get your reasoning on that. Obviously we dis-

agree because we went ahead with the Barrier Island legislation which was enthusiastically received by the President in a public signing ceremony.

So while I appreciate your candid explanation of your views I wouldn't want you to think by my silence that in any way I am agreeing with you least you labor under that illusion.

Senator Mitchell.

Senator MITCHELL. These guys are probably wondering what to do. They come in and support your bill and you give them hell.

Senator CHAFEE. I am grateful for their support. I think in all fairness, probably the chief reason we are getting this support is that my bill provides for an outright acquisition and paying for it as opposed to the Secretary's legislation which basically uses the Barrier Island approach. I think you are right. In the Barrier Island approach, we did have a careful definition of what is a barrier island. We had a good deal of study in advance. So we really knew what we were doing to a great degree which perhaps isn't as true under the proposal that the Secretary made.

I don't want to knock his legislation but I think there are, as you noted, in our legislation a lot of study involved before we decided what wetlands do exist and how we should proceed.

Senator MITCHELL. Mr. Chairman, I wanted to pursue briefly the subject that you touched on and that is tax incentives since both Mr. Young and Ms. Stewart mentioned that.

Mr. Young, in your statement you suggested that the problem is that the appraised value of the wetlands often is a relatively modest amount and therefore the income tax deduction is not of sufficient value to justify the contribution. You seem to imply by saying that the fair market value is determined without consideration of public or environmental benefits that in such circumstances an alternative method of evaluation be provided. That is, taking into account such factors for the expressed purpose of inflating the value or increasing the value. Is that what you have in mind if you could be explicit on it?

Mr. YOUNG. A lot of the landowners own economic productivity, the value that there is a return on the land. A lot of land potentially is very valuable from a resort development standpoint. As a matter of fact, it can be at some point that that area could be converted to a different and higher and better use. So possibly some long-term benefit that that property owner could obtain by contributing it to one of these systems that we are talking about.

Senator MITCHELL. Your organization has available to it, I think, the knowledge and expertise to produce or to come up with a recommendation. I wonder if you would do that?

Mr. YOUNG. I would be happy to work on that.

Senator MITCHELL. I would ask you if you would come up with a specific proposal that we could look at in an effort to determine whether or not this should be pursued. I would ask you, Mr. Permar, to do that. You did not touch on that in any detail in your statement but I would like to ask you if you would do that as well.

Ms. Stewart, has your organization done it? You described that considerably in your statement.

Ms. STEWART. We were considering such things as the energy system developed by Dr. Eugene Odum and the kind of system that

is about to be completed by the center for wetlands study at LSU; These types of system diagrams are familiar to all biologists dealing with permitting right now. There are many of them. We are not particularly concerned with which system is used. We think any number of them would be good.

Senator MITCHELL. You are talking now about it?

Ms. STEWART. The public value system.

Senator MITCHELL. You were talking, in your statement, establishing priorities to concentrate on.

Ms. STEWART. Exactly.

Senator MITCHELL. Are you suggesting that the same mechanism may be transferable to the concept of valuation for tax incentive purposes?

Ms. STEWART. Once you have applied the value system to the inventory, then it can be used for the taxing system, for acquisition, or whatever. We felt that was a good idea. Also on tax incentives, we concentrated on things like capital gains deductions, State tax credits, and tax deferrals. We are considering a couple of recommendations that deal with property taxes, but we are not finished discussing those. The ones that we have approved deal with the Federal tax code.

Senator MITCHELL. Would you join Mr. Permar and Mr. Young in submitting to us a written statement on that, on the question of mechanisms for determining how to implement a more realistic tax incentive program?

Ms. STEWART. We certainly will. [See p. 82.]

Senator MITCHELL. Thank you. Thank you, Mr. Chairman.

Senator CHAFEE. Thank you, Senator.

All of us would find that helpful. In other words as I understand Senator Mitchell's request of each of you, is to tell us your thoughts on a tax incentive program.

Fine, thank you all very much. We appreciate your testimony.

The next panel, Dr. Davison, Dr. Brown, and Mr. Peter Mott.

Dr. Davison will be on the extreme left and Dr. Brown in the middle and Mr. Mott you will be on the extreme right facing us.

Senator CHAFEE. Dr. Davidson, why don't you proceed.

Each of you will be limited to 5 minutes. Your statements will go in the record.

STATEMENT OF DR. ROBERT DAVISON, LEGISLATIVE REPRESENTATIVE, NATIONAL WILDLIFE FEDERATION

Dr. DAVISON. Thank you, Mr. Chairman.

I am Dr. Robert P. Davison, a wildlife scientist and legislative representative for the National Wildlife Federation's Fisheries and Wildlife Division.

I appreciate this opportunity to discuss wetlands conservation and to provide comments on S. 1329 and S. 978.

NWF is the world's largest conservation-education organization. We have over 4 million members and supporters throughout the United States and 51 affiliated statewide and territorial organizations. Since the formation of NWF in 1936, our members, affiliated organizations, and staff have supported and worked aggressively for the conservation of this country's wetlands. Our efforts contin-

ue today as we seek strong, comprehensive measures from this Congress to protect a rapidly vanishing national resource.

I appreciate this opportunity to discuss wetland conservation and provide comments on S. 1329 and S. 978. One important component in efforts to resolve the problem of wetlands loss certainly must be increased funding for State and Federal acquisition programs. S. 1329 largely incorporates five proposals to increase Federal and State acquisition of wetlands which we have recommended over the past year or more.

We support those provisions. They are in almost every instance superior to those of S. 978. We would, however, make a number of recommendations to improve the bill.

First, we suggest it should be amended to change the method by which funds are apportioned to the States from the migratory bird conservation fund.

Senator CHAFEE. Slow up 1 minute. What page are you on?

Dr. DAVISON. I am kind of skipping around here. I am on page 6.

Senator CHAFEE. I want to follow your recommendations.

Dr. DAVISON. We suggest the bill be amended to change the method by which funds are apportioned to the States from the migratory bird conservation fund. S. 1329 allocates money to the States on a matching basis according to the amount of Federal funds obligated to wetlands acquisition by the States during the most recent fiscal year for which the calculation of such funds is practicable.

We have talked now with personnel in 40 State fish and wildlife agencies and based on these conversations, we believe this approach may present a number of difficulties. Under this method of apportionment, States without active acquisition programs, of which there are many, and States with very limited programs are placed at a permanent disadvantage for the life of the emergency provision.

Moreover, the apportionment does not seem likely to put money where acquisition is most needed nor where it is most likely to occur.

There are other problems in determining the ratio used in S. 1329 as the basis for apportionment. I have detailed those in my written statement. I don't think that any of them are insurmountable. But we believe these problems could best be overcome by proportionately distributing the funds to the States based on their yearly commitment to spend the funds. Specifically, each State should submit yearly a list of acquisition projects to which it is willing to commit funds. Subject to approval, the Secretary would apportion matching funds among the States for their acquisition projects.

Where requests by the States exceed the available matching funds; that is the \$50 million, the funds would, then, be apportioned among the approved requests on the basis of the ratio which each State's commitment of non-Federal funds bears to the total amount of non-Federal funds committed by all the States in that year.

This method of apportionment distributes money equitably to the States so that each State gets a share of the matching funds that is proportional to its commitment and puts those funds where they

are most wanted and, therefore, where they are most likely to be used.

Regardless of the method of apportionment, we recommend that a State be allowed to include so-called in-kind or gift credits as obligated funds in their share of the cost of the project. Many States currently use this type of match to acquire lands under the Pittman-Robertson and Dingell-Johnson programs.

More than 90 percent of the wetlands outside Alaska occur on private lands in the United States so that while it is extremely important for active Federal and State acquisition programs to continue, it is in our opinion more important to provide mechanisms to maintain or restore wetlands that are privately owned. S. 978 purports to provide such mechanisms by curtailing Federal encouragement of private wetlands destruction.

My written statement includes a detailed description of the deficiencies of title I in S. 978. I won't elaborate here. But the end result of the deficiencies outlined in my statement, I believe, are such that the bill provides little, if any, meaningful protection for wetlands.

S. 1329 on the other hand takes a sound and, perhaps, overly cautious step toward ending Federal encouragement of wetlands destruction. We certainly need to know more about what Federal statutory and regulatory mechanisms induce wetland destruction and degradation, but the need to know more should not lead to inaction for several more years.

We already know enough about what causes wetlands destruction and degradation to take steps toward curtailing the Federal role in the problem.

There are a number of existing studies that have identified Federal incentives to drain wetlands.

Senator CHAFEE. Your time is up.

Do you want to summarize?

Dr. DAVISON. Fine. Our final recommendation would be that S. 1329 be amended to include and codify certain of the substantive provisions of the Executive order on protection of wetlands, 11990.

We believe that a provision similar to section 2(a) of the Executive order should be codified. The Environmental Defense Fund has suggested such language and we support it.

Thank you.

Senator CHAFEE. Thank you, very much, Dr. Davison.

Dr. Brown.

STATEMENT OF DR. WILLIAM Y. BROWN, ENVIRONMENTAL DEFENSE FUND

Dr. BROWN. Mr. Chairman, members of the subcommittee, I appreciate the opportunity to give you the views of the Environmental Defense Fund, Inc., the World Wildlife Fund, The American Institute of Biological Sciences, the Center for Environmental Education, the Defenders of Wildlife, Friends of the Earth, the National Audubon Society, the National Parks and Conservation Association, the Natural Resources Defense Council, the Sierra Club, and the Wilderness Society on proposed legislation for the protection of wetlands.

Senator CHAFEE. We are delighted to hear those words. We want to hear what you have to say.

Mr. Chairman, the POWDR bill would, among other things, extend the Wetlands Loan Act authorization for a decade, then forgive the loan under that statute, raise the migratory bird stamp from \$7.50 to \$15 and authorize the imposition of entrance fees for certain national wildlife refuges.

We welcome and support these proposals. Yet, the Interior Department has also now asked the Congress not appropriate funds for acquisition of wetlands under either the Wetlands Loan Act or more significantly the land and water conservation fund. The bottom line is an empty cashbox for wetlands, high sounding words notwithstanding.

The POWDR bill would also pursue wetlands protection on the trail of the coastal barrier island legislation. In concept, title I of the POWDR bill would bar Federal expenditures or financial assistance if either of those would lead to the development of wetlands. In fact, as Senator Mitchell has pointed out, nearly all expenditures and financial assistance that destroy wetlands are exempted from the bill.

Mr. Watt would justify these exemptions on the grounds that no more is feasible politically and we should take what we can get. If, indeed, title I must be unraveled so completely to become law, the Secretary is commanding the attention of the Congress to this issue only to engage it in a fantasy of little significance.

We welcome the alternative wetlands protection bills introduced by Mr. Chafee in the Senate and Mr. Forsythe in the House, S. 1329; H.R. 3082. In addition to the revenue-generating mechanisms for wetlands contained in the POWDR bill, S. 1329 would direct that duties on imported arms be earmarked for wetland acquisition and for each of 10 years would transfer \$75 million for wetlands acquisition from sums covered into or credited to the land and water conservation fund into the migratory bird conservation fund. Although still a modest amount of money in light of the importance and loss of wetlands, S. 1329 would significantly advance wetlands conservation and reflects its sponsor's commitment to preserving the natural heritage of our Nation.

We also support S. 1329's mandate for better assessment of the extent and causes of the loss of wetlands conversion that have been exempted from title I of the POWDR bill. However, we believe that Federal agencies providing wetland-destroying subsidies should not be let off the hook entirely pending such study. If it is not possible now to eliminate Federal subsidies that encourage wetlands destruction, at least agencies providing those subsidies should be required to evaluate the destructive effects of what they are doing and to minimize the effects.

The draft legislation attached to my testimony would accomplish this purpose by codifying in statute the central policies of Executive Order 11990 on protection of wetlands but would avoid the shortcomings of the Executive order.

Beginning no later than 1 year after enactment of the new section, a Federal agency would be authorized to make an expenditure or provide Federal assistance that encourages wetland conversion only after determining that (1) there is no reasonable alternative

that will satisfy the purpose of and the need for the expenditure or financial assistance and that will not encourage wetlands conversion of wetlands, (2) the agency has adopted practicable modifications or conditions that will minimize conversion, and (3) the agency has assessed the geographic location, total acreage and the nature of the conversion of wetlands that will be encouraged by the expenditure or financial assistance.

These agencies, Mr. Chairman and Senator Mitchell, are in the best position to obtain such information because unlike the Fish and Wildlife Service, they would not have to beg for crumbs of information about what effects agency actions are having on wetlands. These agencies control the pursestrings for the subsidies and they are in the best position to request and get basic information on wetland effects from the recipients of the expenditures or financial assistance.

Beginning no later than the budget request to Congress in fiscal year 1986, these Federal agencies also would be required to specify the location, acreage, and nature of wetland conservation that will be encouraged by the expenditures of financial assistance.

We urge the subcommittee to consider this additional title carefully and to include the title in the bill when it is reported. We also fully support the recommendations made by the National Wildlife Federation.

Nearly one-half of a million acres of wetlands are lost each year. Against such a backdrop adoption of our recommendations is the least that is responsible until a more definitive choice of policies on subsidies can be made.

Thank you, Mr. Chairman.

Five minutes and three seconds.

Senator CHAFEE. Thank you, very much.

You made it. I appreciate your constructive thoughts.

Senator CHAFEE. Mr. Mott.

STATEMENT OF PETER RHOADES MOTT, PRESIDENT, FLORIDA AUDUBON SOCIETY

Mr. MOTT. Thank you, Mr. Chairman.

I would like to make a deal with you. When you started you placed me on the extreme right. If you move me leftward a little bit I will restrict my comments very markedly and simply enter my written comments in the record.

Senator CHAFEE. All right.

Mr. MOTT. Thank you.

I think it is particularly appropriate that the Interior in their mapping of wetlands placed Florida very high on the level of need. They observed that Florida has been mapped because they can work there all year long. They point out that the people who are destroying the wetlands are working all year long as well. We need help. I am here in summary to ask for your help.

Eighty percent of the wetlands that have been taken away are agricultural and one of the things that is going on in Florida is that the State has begun a program and tried to get agricultural land bought back. I think it would be marvelous if some of the ap-

propriation that you proposed in your bill, Senator Chafee, could be used for that purpose.

In addition, much of the land which the State would like to see purchased is already designated as Federal park or Federal refuge. So that I think there is a need in the State of Florida. There is a coming together of all of our purposes.

If you turn to page 3, I will go very quickly through some of the highlights that I would like to comment on. The first of them of course is Secretary Watt's section 106 which is the exceptions and you can be sure that the entire delegation from Florida will be hotly debating many of those. But I think we find exception No. 1, exception No. 5 particularly troublesome. We have been through a long battle on exceptions for mining as exemplified by our strong position about the Osceola Forest and the phosphate mining there. I trust that that section will be amended.

I think we need to know more about the exceptions proposed for silviculture which is extremely important in Florida before we could support those.

We are particularly enthusiastic about the proposal from Secretary Watt to ask nonconsumptive users to contribute to the support of the refuge system. I know a number of us have been anxious to do that. It is good to see a vehicle brought forward. The nonreceptive users seem to be faced with the one-time use permit and it might be well to have something parallel to the duck stamp which would do the same thing for nonconsumptive users.

We are certainly enthusiastic, Senator Chafee, about your proposal to exempt citizens over 62 years of age from paying that fee. On application they would get a lifetime pass.

One of the major uses of the refuges ought to be on the education of our children about wetlands and their values and therefore we would propose that exemptions be made for schools, colleges, and club groups who come into the area. Obviously we are enthusiastic about using land and water conservation funds to aid in the purchase, since the purchase of the land seems to be the best solution. We hope that will move forward quickly.

Earlier on, Senator Mitchell, you commented on, I would paraphrase it by saying that duck hunting is not equally good in all States and therefore duck stamp sales are not equally great and the need for wetlands preservation is very good in some places where duck hunting isn't good. So I would hope some other formula such as in Florida where they credit the State for the sale of save our river program is very substantial; some other formula would be developed for distribution of funds.

We are obviously enthusiastic about tax incentives. I was pleased to hear that there may be some way developed by the panel that preceded us to establish a value. I think you know that wetlands have been demonstrated to be more productive of biomass than anywhere in the Nation and yet it is valued only for filling and building recreation and vacation homes.

Finally, I would urge all of you in Washington involved with the legislation to move it through as quickly as possible. The sooner it can be done the better.

Thank you very much.

Senator CHAFEE. Thank you, Mr. Mott.

Let me ask you a question.

What have you found is the best single incentive to protect wetlands in Florida? You folks down there have done a good job. I know you, the Audubon Society, and other groups have been very active. What has been the best single step that has been taken. Has it been State government action? Has it been the private sector, a Governor who has cared? What has been the best thing?

Mr. MOTT. I think that the citizens of the State of Florida have shown an overwhelming concern for the preservation of State lands in a lot of different ways, tax incentives, conservation, recreation acts, all across the board. The real problem is so much of the land is wetland and so many people have their hopes tied up in it that separating the man from his potential for money has been at the heart of it. I think all of us in the State are convinced that some form of fair compensation has to be developed. I think the save our rivers program, for example, Governor Graham's program, started a year ago, offers to buy the land at fair market value for use in wetland conservation.

Senator CHAFEE. That must take some very healthy appropriations from the legislature, doesn't it?

Mr. MOTT. It does. It has been done through bond issue. We also have five water management districts and those water management districts are free to establish taxation in order to purchase wetlands and for the first time St. Johns River Water Management District did that about 8 months ago. There have been forces in the State who have tried every conceivable device to stop that. For example, the city of Jacksonville which is Duval County, has taken steps to remove itself from the water management district in direct opposition to the taxation.

Another county, Nassau County, has asked to be taken out. That is not the right county.

So buying land throughout ad valorem taxation has proven to be extremely difficult.

Senator MITCHELL. What do you mean? What kind of tax is imposed?

Mr. MOTT. Tax on the value of the land.

Senator MITCHELL. Is it a surcharge on the property tax?

Mr. MOTT. Yes. There is a water management district which encompasses a number of counties. The water management district establishes the level of that taxation given that right of the State and only one has done it so far.

Senator MITCHELL. On the land which is in addition to the ordinary property tax that is imposed by the municipality?

Mr. MOTT. Yes.

Senator CHAFEE. Does Florida have a system whereby the county or the State, some entity, buys up the development rights of land?

Mr. MOTT. No. I don't believe the State does. They have developed a system of the sale of the development rights. For example, in Palm Beach, in the eastern section of the Everglades, it is possible to sell development rights in order to conserve wetlands.

Senator CHAFEE. Sell them to who? Governmental entity or a conservation group? Normally it would be a governmental entity that would buy it. Then in perpetuity the land would remain.

Mr. MOTT. I think what I am talking about is the transfer of them to another owner in the area. In other words, you can develop one part of an area more intensely if other parts of it are developed much less intensely. The land owner can transfer his development price to another land owner.

Senator CHAFEE. Senator Mitchell.

Senator MITCHELL. What is the reaction of each of you to the increase in the duck stamp fee?

Dr. BROWN. We support it.

Dr. DAVISON. We support the approach taken in S. 1329 where the price of the duck stamp would be increased gradually over the next 5 years. I think our membership feels that a doubling of the duck stamp at this point in time is just far too great a jump. It may likely be counterproductive in terms of reducing sales of duck stamps and limiting options of States to increase license fees or initiate their own waterfowl or habitat stamps.

Mr. MOTT. I think we favor the gradual increase of it.

Senator MITCHELL. What is the reaction of each of you to a suggestion, which I am about to make which is a multiyear stamp in which the fee would be paid initially, so there would be an upfront substantial increase in revenues and of course the purchaser would be getting a bargain over a period of time?

Mr. MOTT. Are you talking about something that is equivalent to a life membership?

Senator MITCHELL. I wasn't thinking about a life membership, 5-year stamp, some period of time, perhaps life membership. Maybe there could be variations of it.

Mr. MOTT. I think that given the urgent need to purchase at today's prices rather than tomorrow's prices, that that has a lot of validity.

Senator MITCHELL. In effect you are seeing the value of what you are purchasing and the destruction that is proceeding rapidly, so it seems to me, you can justify a one-time substantial increase even though it obviously depresses revenues during the period of the time of the existence of the stamp to get ahead of it. What do you think about that?

Dr. BROWN. We support a multiyear or a lifetime stamp.

Dr. DAVISON. I think we would support that as long as it was an option, that there was also a yearly stamp available to people who wished to proceed that way.

Senator MITCHELL. So you would support it but you wouldn't want to make it mandatory?

Dr. DAVISON. That's correct.

Senator MITCHELL. Thank you, Mr. Chairman.

Senator CHAFEE. Gentlemen, do you think the States that come up with their matching share of this \$50 million that under my proposal would be out and matching the funds?

Dr. DAVISON. Twenty-four States with duck stamps right now or similar kinds of habitat stamps are generating somewhere between \$5½ and \$6 million a year from the stamps alone. In addition States, of course, purchase wetlands from other funding sources. I think the States could match the amount that is proposed to be allocated to them.

Senator CHAFEE. What do you say to that, Dr. Brown?

Dr. BROWN. I agree with the statement although part of what Mr. Davison said was that they are somewhat limited in how much money they could come up with. We should look for alternatives which would not require a duck stamp program in the State.

Senator CHAFEE. But my question is do you think they would come up with—

Dr. BROWN. From what I have heard, it is hard to know, but I doubt that they could come up with that level of money in the near future.

Senator CHAFEE. It is hard to hear you.

Dr. BROWN. I doubt that every State could come up with the money in the immediate future, in the next several years.

Senator CHAFEE. To get down to a relative modest amount.

Dr. DAVISON. The States would only have to come up with about \$16.8 million in order to use the \$50 million available in match. I think the States could do that, particularly if you distribute the money to the States that are willing to spend it.

Dr. BROWN. To clarify that. We certainly support the provision. It wouldn't have to be used to the maximum to make it useful. I am simply trying to give my sense that I doubt that it would be used its full potential immediately.

Mr. MOTT. Senator, I spent quite a long time trying to decode or decipher your ratio on your title III. I could not come up with a dollar value for Florida. But I think it is safe to say that Florida would need its share and perhaps it would be willing to lend some to some of the other States that aren't able to come up with enough. We are spending a tremendous amount as it is. I think the Federal share would be well under the ratio.

Senator CHAFEE. It has been my experience in State government that when you have something out there, 25-cent dollars available, that they tend to take it particularly in something that has an appeal. I don't know how it breaks down. But I think the amount that each State would have to come up with would not be that great.

All right, fine. Thank you very much, gentlemen. I appreciate your coming.

The next panel is Mr. Berryman, Mr. Williamson, Mr. Dennis, and Mr. Sampson. Why don't you line up in that fashion, facing us starting on the left, Mr. Berryman, Mr. Williamson, Mr. Dennis, and Mr. Sampson on the right?

Mr. Berryman, why don't you proceed?

**STATEMENT OF JACK BERRYMAN, EXECUTIVE VICE PRESIDENT,
INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGEN-
CIES**

Mr. BERRYMAN. Thank you very much, Mr. Chairman.

I am executive vice president of the International Association of Fish and Wildlife Agencies and have the privilege of serving on Secretary Watt's POWDR group. We appreciate this opportunity because we consider the matter of wetlands a survival issue not only for migratory waterfowl resources but for others of society's values.

It was for this reason that we welcomed the opportunity to participate in the POWDR group. While our Association, which includes all of the 50 State fish and wildlife agencies, may not agree with all provisions of the POWDR bill, we nevertheless regard it as a very significant starting point. You are also to be commended, Mr. Chairman, for the proposals which you have developed and are now considering and for your willingness to explore other alternate approaches which may appear to have merit.

I would stress at the outset our full agreement with the basic concepts of both of the measures now before you and our questions relate to specific provisions rather than to their primary purpose. Heading the list of items with which we fully concur is the provision for an extension of the Wetlands Loan Act authorization for an additional 10 years. To make the extension most effective, however, will require a forgiveness of the initial \$200 million loan of which \$147 million has already been spent.

We urge adoption of that provision.

In the matter of new funding for additional wetlands acquisition, we consider the provision of S. 1329 for a \$75 million annual appropriation from the land and water conservation fund for State and Federal agency efforts realistic and necessary to address the problem.

However, we disagree with the way in which both S. 978 and S. 1329 propose to allocate funds to the States for that acquisition. Pegging the allotment to revenue realized from the State sale of duck stamps as is proposed under the POWDR bill will bar participation of all States not using that type of wildlife permit, regardless of the benefits to which they may otherwise be entitled.

The formula used in S. 1329 allocates money to the individual States on the basis of the amount of non-Federal funds obligated by each State to wetlands acquisition during the most recent fiscal year.

Our concern is that this formula for allocation of the funds will preclude programs in some States having a vital need to protect wetlands. Our association prefers a formula which recognizes both national and State priorities and which would permit the use of any wildlife resource-related funds as a State's matching share.

We therefore urge adoption of a provision which would permit use of other wildlife resource-related funds as a State's matching share where appropriate.

We are confident, Mr. Chairman, that the States will be able to come up with matching money.

Another area in which we prefer the S. 1329 approach is in the matter of an increase in the Federal duck stamp price. In our judgment, an increase in the annual fee from \$7.50 to \$15 in three stages over the next 5 years is more advisable than the proposal for effecting the increase in a single step.

Senator CHAFEE. You don't think we would have the drop if that would occur? You think you would get more money in the end?

Mr. BERRYMAN. Yes. Then, also, a number of the States are attempting to increase the cost of their own licenses. To support an immediate doubling of the duck stamp fee would compromise their political ability to increase funds for their purposes.

One program provision we feel should be amended is that relating to the method for identification of eligible wetland areas and we believe that quality of the resource should be taken into account as a selection criteria;

The 5-acre minimum provided under S. 978 is inappropriate. In another respect—that relating to measures for dealing with the causes of wetland losses—we find both S. 1329 and the POWDR bill cause for concern.

The POWDR proposal addresses the issue by proposing curbs on Federal assistance. S. 1329, on the other hand, proposes only that the Secretary of the Interior undertake a study and report to the Congress 2 years from now.

There is a substantial question of whether we can afford that additional delay, given the present rate of disappearance. We urge, therefore, that the study be speeded up and that some more immediate and definitive action be considered as part of the further discussion of this legislation, perhaps through increased utilization of related legislation already on the books.

Senator CHAFEE. Your time is up, Mr. Berryman.

Why don't you wind it up?

Mr. BERRYMAN. All right.

Our Association is also concerned with identifying the Federal system as the POWDR bill proposes. We think it would alienate land owners. We strongly endorse the S. 1329 requirement that the Fish and Wildlife Service complete the wetlands inventory. We support use of economic incentives for wetlands protection and, again, Mr. Chairman, we appreciate this opportunity to present our organization's views.

We consider this issue very important and we would like to work with you and your committee and the staff in any way that we can in addressing it.

Thank you, sir.

Senator CHAFEE. Thank you, Mr. Berryman.

We appreciate the help you have given us already in this legislation. We will be working with you in the future.

Mr. Williamson.

STATEMENT OF LONNIE L. WILLIAMSON, SECRETARY, WILDLIFE MANAGEMENT INSTITUTE

Mr. WILLIAMSON. Thank you, Mr. Chairman.

We have studied the wetland measures before the subcommittee. We think both have sections that would improve wetland conservation. Therefore, rather than speak to the specific bills, I will make remarks to the major provisions that the Institute would like to see improved by the subcommittee.

We support the transfer of money from the land and water conservation fund into the migratory bird conservation fund. We also favor using a portion of that annual transfer for paying 75 percent of the cost of federally approved State wetland acquisitions.

We endorse extensions of the Wetlands Loan Act. And we recommend that the loan repayment requirement in that act be deleted. Language requiring an entrance fee into the national wildlife refuges, where a program would be feasible and profitable, is a good

idea in our view. With regard to increasing the duck stamp price, we suggest that the graduated approach would be more publicly acceptable.

We also support redirecting the import duties on foreign made arms and ammunition into the migratory bird conservation fund for wetland acquisition.

The wetland inventory and the periodic trend reports are necessary in order to define wetland acquisition needs. They should be conducted and completed on a firm schedule. We also believe that directives requiring the Interior Secretary to study and identify Federal causes of wetland destruction are important. We are hopeful that this provision will lead eventually to less Federal subsidy of wetland loss.

Finally, Mr. Chairman, we prefer to see wetlands defined by the Congress in this legislation rather than in later regulation. A regulatory definition may be too long in the process and inadequate when finalized.

Thank you.

Senator CHAFEE. Thank you. You have set a record.

Mr. Dennis, nice to see you back.

STATEMENT OF MICHAEL DENNIS, GENERAL COUNSEL, THE NATURE CONSERVANCY

Mr. DENNIS. Thank you, Mr. Chairman.

Do I get to use his extra time?

My name is Mike Dennis, vice president and general counsel for the nature conservancy.

First of all, we would like to thank Senator Chafee, Senator Mitchell, the rest of the committee for an opportunity to express our views on this legislation.

In addition, we welcome and endorse your efforts and the efforts of Secretary Watt and the POWDR task force to present positive legislation to attack a critical natural resource problem, our vanishing wetlands.

The conservancy is a national nonprofit conservation organization—

Senator CHAFEE. I think we know what you are. Get right into your recommendation.

Mr. DENNIS. OK. Since over 50 percent of our protection activity is focused on water-related systems, we would strongly endorse the following aspects of this legislation.

No. 1, the extension of the Wetlands Loan Act for another 10 years, and the deletion of the loan act repayment provision.

No. 2, the payment of an additional \$75 million a year from the land and water conservation fund into the migratory bird fund for at least 10 years.

No. 3, the provision that pays up to \$50 billion per year on a three-to-one match to the States to protect wetlands.

We respectfully request that these State matching funds be made available for data to collect and design as well as for acquisition for land.

No. 4, we feel that the bill should provide at the minimum an additional \$25 million to the migratory bird fund for Federal wetlands acquisition.

No. 5, we also suggest the creation of additional funding sources for wetland conservation through such new sources as the increase in the duck stamp to \$15 per year, new refuge entrance fees, payments of duties on import firearms, and other items such as this that are being considered by the committee.

No. 6, we strongly support the proposed acceleration of the Department of the Interior's wetland inventory, and, trend analysis so we will have identified the priority wetlands as soon as possible.

No. 7, lastly, we urge the chairman and the committee to amend the definition of wetlands now found in the bill to include associated aquatic system so that this legislation will protect important ecological, fishery and wildlife resources associated with running streams, deep water ports, lakes and desert and other springs.

As a compliment to this legislation in working through the House Ways and Means Committee, we encourage the creation of new tax incentives that will assist with our wetlands protection efforts.

The nature conservancy is currently working with your associate in the Senate, Mr. Wallop and with members of the House Ways and Means Committee on a Federal tax incentive package which is more fully described in our written testimony.

We would be happy to answer any questions. Once again we applaud your efforts, Mr. Chairman.

Senator CHAFEE. We will have some questions for you because your organization has been so deep into this business, Mr. Dennis.

Mr. Sampson.

STATEMENT OF NEIL SAMPSON, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF CONSERVATION DISTRICTS

Mr. SAMPSON. Thank you, Mr. Chairman.

Let me begin by making note of the fact that in looking at my written statement, I discovered a couple of errors. Those have been corrected with the document clerk. I apologize for that.

Senator CHAFEE. All right, fine.

Mr. SAMPSON. The National Association of Conservation Districts supports passage of S. 1329 with some minor modifications which we will discuss. We do not support S. 979 for reasons that I will mention briefly.

Let me start by touching on some of the features of S. 1329 that we would like to point out.

Paragraph G of section 201 appears to authorize charging a fee for special permits to land holders in the refuge system. Our people would be concerned that private owners of land within the refuge system be somehow allowed free access to their land and we ask you take a look at that.

We encourage the passage of provisions dealing with the expeditious development of the wetland inventory. We would like to recommend one small amendment, however, which would have the Secretary of the Interior consult with the Secretary of Agriculture on this inventory. Because of the interplay between agricultural

and wetlands, particularly those agricultural lands that grow crops like rice, cranberries, and other things, the inventory can get very complicated and will need input from agricultural and soil scientists.

We hope that could work something out that would be amenable to all uses of the lands. We also would like to see that wetlands report recognize that land owners create a good deal of wetlands, a trend we would like to see continued.

We see that the list of projects and activities to be analyzed by the report lacks any of the activities funded by the Department of the Interior and suggest that some of their activities on the wetlands should be included.

Three years ago our association brought the matter of induced wetlands to the attention of the Department of the Interior and the Department of Agriculture but it is still not addressed. We would hope that this report would somehow address it.

Many of the wetlands in the West are there because of the seepage or leakage from irrigation canals or excess runoff from irrigation systems. As we move into those areas under the guise of water conservation efforts aimed at plugging the leaks in the canals or making more efficient use of scarce water, we find that more efficient use of irrigation water results in less loss of water which results in the drying up of those induced wetlands.

Thus, we come afoul of the twin goals of wetlands protection and water conservation. That is not an easy issue to resolve. We have asked the Department of the Interior and the Department of Agriculture to work together to try to come together with some resolution.

They formed a committee. That was about the size of it.

We would like this report to at least address the fact that induced wetlands in the West are very critical to that area. They may be the only wetlands in miles and, yet, at the same time, water conservation is also sometimes a very urgent problem.

We are concerned, as we said about title I of S. 978. Those concerns are listed in our prepared statement.

With that, Mr. Chairman, we appreciate the chance to register our opinions on these very important bills, and would assist in any way we can as you move forward.

Thank you.

Senator CHAFEE. Thank you.

That is a tough one you have given us on leakage. What do you call it, induced wetlands?

Let me ask you gentlemen. As I hear you and the other witnesses talk about the States coming in with their matching share and trying to figure the formula and so forth what do you think of the suggestion to forget it and going in with the \$50 million itself? After all what we get under this would only be \$16 million additional. Suppose we just forgot having the States come up with the matching share. What do you say to that?

Mr. BERRYMAN. Given a choice, we would certainly rather see the Federal Government have the money to buy wetlands and to identify priorities in consultation with the States. But we really think it needs to be a twofold program. It should recognize the pri-

ority on a national basis and to insure State support, be one that also recognizes State needs.

Senator CHAFEE. Mr. Dennis, your organization has had a lot of experience in this. As I understand your organization, you get out of the projects as quickly as possible and turn them over to somebody else and move on to acquire new lands. Is that a fair summary? You don't try to hold lands yourself, do you?

Mr. DENNIS. We do. We have the largest private sanctuary system in the United States. We own 700 preserves. About half of our work is working with the State and Federal Government, acquiring lands on their behalf and transferring the lands to them.

Senator CHAFEE. Have you had success in State operation of facilities?

Mr. DENNIS. We have. As a matter of fact, we spend a great deal of time during our long term planning project putting more and more of an emphasis into trying to turn over every stone at the State level to identify State funding sources. We have been working with State government in identifying and passing conservation legislation. We have worked with State governments in establishing what we refer to as checkoff bills. Minnesota for example raises about \$700,000 a year through a checkoff on the State tax return. Virginia raises about \$400,000 to \$500,000 a year with the State checkoff.

Senator CHAFEE. A person can check off any amount of dollars?

Mr. DENNIS. That is correct.

Senator CHAFEE. Tell us what you have used as a tax incentive? What do you recommend for tax incentive?

Mr. DENNIS. First of all, I do not want to create the impression that we view the Federal tax incentives as a panacea. However, we do feel in dealing with the problem, to create some additional Federal tax incentives would certainly help. We have listed some of the specific measures that we are working on in the written testimony, things such as upgrading tax writeoff for charitable deductions for gifts made for charitable purposes including wetlands.

We also are looking at some tax initiatives that would deal not only with the gift deduction. Many people that own wetlands cannot take advantage of charity so we are looking at things that will give these people the benefit of the tax free exchange, and involuntary conversion treatment if they are to sell property for conservation purposes.

We are also looking at some new estate tax provisions.

Senator CHAFEE. You mean if they sold it to you there would be no capital gains?

Mr. DENNIS. If a private land owner would sell a piece of land to the conservancy, wetlands for conservation purposes, give that person a two or three year period to reinvest those proceeds tax-full in like kind property.

Senator CHAFEE. Thus avoid a capital gains except from the final transfer?

Mr. DENNIS. That is right; just defer that tax.

Senator CHAFEE. I am a little skeptical at your proposal that the Federal funds could be used for other than acquisition. It seems to me whereas it is nice to have data collection and project design, planning and so forth, that the real need is acquisition. It is my

judgment. I may be incorrect, I would be glad to hear your views or any on the panel. Acquire the lands first, then the project, the data collection, project design, planning and making them available for the public and the walks through them and all of that, that will come later.

That the State can come up with their own money. There will be enough pressure for that. But the key thing seems to me to get the lands before they are gone.

Mr. DENNIS. I think I agree with most of that statement. It is important though. That we are not talking about a huge portion of that money. We are talking about using a certain percentage of the funds to make sure that what you are acquiring is the right thing. We have discovered in the conservancy in our 25, 30 years history that the biggest portion of our operation's budget goes to land management.

A good chunk of that goes to expenditures that we could have avoided. We have gone about our acquisition business, setting up priorities, designing that reserve in little better fashion. We do feel a certain amount of those funds should go into designing the package, protection of the land, looking at what you are trying to acquire, going about it in a rational way. But I agree with you. We have to get out there and get those wetlands as soon as possible.

Senator CHAFEE. Mr. Berryman.

Mr. BERRYMAN. I would like to comment on that, Mr. Chairman. We think it is necessary to acquire those that are critical, but we know that the State and Federal Governments can never acquire enough wetland or other kinds of habitat, that the preservation of those lands must be made compatible with other land uses. That is why we support some form of compensation, or tax incentive for maintaining the lands in private ownership but undrained. So we will hope that one outcome of these deliberations of the committee would be a thorough exploration of in what ways can we make it more attractive for the landowner to leave wetlands alone, recognizing of course that we must acquire the critical wetlands.

Senator CHAFEE. Senator Mitchell.

Senator MITCHELL. Just briefly, I would like to ask each of you to comment on the proposal for a multiyear stamp.

Mr. BERRYMAN. I would comment I guess by hedging, mainly because our association hasn't studied it out. There is a number of States that have attempted the lifetime stamp or multiyear stamp and they are still trying to figure out the economics and the benefits of it. I just don't know what the proper answer to that is.

Mr. WILLIAMSON. Mr. Chairman, we think that something should be looked into. I think it has the potential of being very successful. I know North Carolina at the present time is very upbeat about their lifetime license that they are selling. They are simply using actuarial tables to determine what a lifetime license cost a person at a certain age.

Senator CHAFEE. I couldn't understand you. Who is enthusiastic about that multiyear stamp?

Mr. WILLIAMSON. The State of North Carolina is now selling lifetime hunting licenses which would be a corollary to a duck stamp.

Senator CHAFEE. I suppose that is a rather substantial amount when paid for?

Mr. WILLIAMSON. Yes. I don't know exactly what the total cost of a license is, but it would be different at different age groups just like buying insurance. They actually use what the insurance companies use, projected on how long they anticipate you will live on the average or people of your age will live. That is how they charge it. They have expectation by taking this lump sum money and putting it into a fund and using the interest of that fund that they will, a person buying a lifetime license will provide the agency more money in the long run than they would by buying a license every year.

I think it is something for the duck stamp that you should look into.

Mr. DENNIS. Senator Mitchell, my instincts in dealing with land would support looking at some type of a long-term duck stamp. We look at the way land values have gone up, although who knows what is going to happen over the next few years. Looking at the history of land values escalating, looking at the incredible rate in which wetlands are getting wiped out, 450,000 acres a year has been thrown around, I would like to get my hand on that large sum of money up front and use it.

Mr. SAMPSON. Senator, we have not studied that issue as an organization. Answering as a consumer of the stamp, I think that sounds like a reasonable approach. I sympathize with Mr. Berryman's constituency, who will have to deal with the administrative problems that would have to be worked out. But certainly it does sound reasonable.

Senator MITCHELL. Thank you gentlemen. I have no further questions, Mr. Chairman.

Senator CHAFEE. Thank you all, gentlemen, for coming. We appreciate it. You have been very helpful. We appreciate what each of you are doing in your various organizations.

That concludes the hearing.

[Whereupon, at 12:30 p.m., the hearing was adjourned, subject to the call of the Chair.]

[Statements submitted for the record and the bills, S. 978 and S. 1329, follow:]

STATEMENT OF JAMES G. WATT
SECRETARY OF THE INTERIOR
BEFORE THE SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ON WETLANDS CONSERVATION

July 12, 1983

Mr. Chairman, it is a pleasure to be here today to discuss measures to conserve our Nation's wetlands.

This Administration is dedicated to the conservation of the Nation's environmentally significant wetlands. We believe that immediate and effective action is necessary to achieve this important natural resource goal.

For this reason, last year I asked a number of conservation, corporate, and government leaders concerned about the future of wetlands and waterfowl to join me in examining this problem. I wanted to establish a public-private partnership that would seek new solutions to the continuing loss of wetlands. From these discussions, I developed and transmitted legislation to the Congress on March 22, the "Protect Our Wetlands and Duck Resources Act of 1983" (POWDR), which has been introduced in the Senate as S. 978 and in the House as H.R. 2268.

I hoped that this proposal would focus widespread public attention on the continuing destruction of wetlands and that it would serve as the cornerstone for development of a comprehensive legislative program to conserve our valuable wetland resources. I am pleased to see that it has started such a dialogue: You, Mr. Chairman, along with Congressman Forsythe, have introduced the "Emergency

Wetlands Resources Act of 1983" and our presence at today's hearing demonstrates our belief in the importance of these wetlands conservation measures.

Federal responsibility for the protection of migratory birds was first established by international treaty in 1916. From this beginning, wetlands protection has become a high Federal priority, not only because of the importance of wetlands as migratory bird habitat, but also for the many economic and environmental benefits they provide. Until recently, the Federal answer has been to buy wetlands, or easements to them, and put them in protected status. It has become clear, however, that this approach is not, and cannot be, the only answer. The Federal Government simply does not have the money to buy up all the threatened wetlands.

This was apparent to me in 1973 when, as Director of the Bureau of Outdoor Recreation in the Department of the Interior, I prepared the first Nationwide Outdoor Recreation Plan. In that Plan, I envisioned that the Department would develop a plan for protecting wetland areas of highest wildlife and recreation value "with emphasis on methods that do not require public acquisition."

Almost 10 years later, in January 1981, in a discussion with you, Mr. Chairman, during my confirmation hearings, I reaffirmed my commitment to the conservation of wetlands. Last year, I became increasingly convinced that something had to be done to protect wetlands now, not next year or 10 years from now.

A single approach, such as acquisition, cannot succeed; the loss of wetlands must be attacked on all fronts. I believe my proposed "Protect Our Wetlands and Duck Resources Act" would do just that. The cornerstone of the bill is the establishment

of a POWDR System identifying significant wetlands. Within the System, certain Federal expenditures that encourage the unnecessary alteration and consequent loss of wetlands would be prohibited.

Exclusions from this prohibition are similar to those contained in the Coastal Barrier Resources Act, with additional exclusions for agricultural price support programs and water resource development activities. Among the many subsidies that POWDR would eliminate in designated areas are new Federal flood insurance, grants for planning and administering local economic development programs, and grants for airport planning and development. Other subsidies that would be prohibited in System components include HUD community development block grants and new FHA and VA guaranteed housing loans.

Some think the exclusions contained in the bill are too many; others believe the prohibitions are too stringent. We faced some difficult choices in drafting this legislation and you face similarly difficult choices in considering it. The POWDR approach, however, has been embraced by both the Congress and this Administration to protect environmentally sensitive areas along our coastlines under the recently enacted Coastal Barrier Resources Act. Let me emphasize that the bill will not prohibit private landowners from building on their property, will not impose federally mandated duties on State or local governments, and will not supersede other Federal restrictions concerning wetlands. Instead, it advances the common-sense approach that wetlands destruction should not be underwritten and encouraged with Federal tax dollars.

The remainder of the POWDR bill would continue and accelerate the protection and management of key wetland habitat for migratory birds. Title II would strengthen State wetland protection efforts by authorizing, for 10 years, grants from the Land and Water Conservation Fund for wetlands conservation projects. Grants would be available in the amount of three times the revenues dedicated to wetlands conservation from each State's duck stamp program. About half of the States have such a program in place, others are starting this year, and many others are considering proposals to begin one. This provision would have the lasting effect of encouraging all States to supplement their wetlands conservation efforts into the future by instituting this type of stamp program. At the same time, it would give the States flexibility in the use of the Federal money they receive; there are many ways to conserve these wetland resources and we encourage the States to seek out such alternatives.

Title III of the bill would extend the authorization of appropriations under the Wetlands Loan Act for 10 years and would forgive the repayment of advances made under that Act. Forgiveness of these advances now will assure the purchasers of duck stamps that their contribution will continue to be used for the conservation of migratory bird habitat.

Title IV of the bill would increase the revenues accruing to the migratory bird conservation fund by almost 100 percent every year. This would be done by raising the price of the duck stamp to \$15 and, very importantly, by authorizing us to require a valid duck stamp or single-visit permit for entrance into certain designated units of the National Wildlife Refuge system. For years, waterfowl hunters have unselfishly contributed to wetlands conservation through the purchase

of duck stamps. It is high time that we asked others who enjoy the wildlife and outdoor recreational opportunities of our refuges to join in this conservation effort.

Finally, Mr. Chairman, I would like to note that, in conjunction with the POWDR task force, we are examining possibilities for encouraging the public to make more effective use of available tax options to conserve wetlands. When alternative land use opportunities are available, the tax implication of each option is a critical factor in any economic decision concerning the future use of the land. The Federal income tax system should, and does, provide a positive incentive for the protection of wetland resources.

There are existing tax incentives that encourage the conservation of wetlands. The Tax Treatment Extension Act of 1980, for example, verified that donation of conservation interests in fish and wildlife habitat is tax deductible. We believe that the donation of partial interests can become a strong protection opportunity. Because of the importance of these provisions, I wrote to Treasury Secretary Regan urging, on behalf of the POWDR task force, that regulations to implement this provision of the Tax Treatment Extension Act be published expeditiously. On May 20, 1983, the Internal Revenue Service published its proposed regulations. There is a real need to catalog all existing tax incentives for the conservation of wetlands and to make the public aware of their availability. The POWDR task force, in the hope of encouraging donations, intends to disseminate information on these incentives to the private sector.

In addition, The Nature Conservancy, as a member of the POWDR task force, is examining other tax options to conserve wetlands. We will be looking at their recommendations with interest.

There is never an easy answer to a complex problem; more money and more study are at best only partial solutions. Federal acquisition of wetland habitat is an important means of protection and will continue to be. Even so, it alone will never arrest the decline of wetlands. Other Federal programs must be modified to reflect this Federal purpose—inconsistent Federal subsidies need to be removed and Federal tools provided to encourage the participation of others in wetlands conservation.

Mr. Chairman, I believe the POWDR bill is a significant step in the creation of a consistent, comprehensive Federal program to encourage public and private wetlands conservation efforts. I commend you and your colleagues for your prompt attention to these important issues and urge that you move forward quickly to enact the legislation needed to conserve these vital natural resources.

This concludes my prepared statement, Mr. Chairman. I will be pleased to answer any questions you or other Subcommittee members might have.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

September 21, 1983

Honorable Robert T. Stafford
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is to provide you with our views on S. 1329, the "Emergency Wetlands Resources Act of 1983."

S. 1329 shares many of the concepts contained in S. 978, our proposed "Protect Our Wetlands and Duck Resources Act of 1983" (POWDR). Both bills would extend the Wetlands Loan Act and forgive the debt, authorize entrance fees at certain units of the National Wildlife Refuge System and deposit of the receipts into the migratory bird conservation fund, increase the price of the migratory bird hunting and conservation stamp (duck stamp), and provide assistance to the States for wetlands conservation efforts. We are pleased that our POWDR proposal has been able to serve, in large part, as the foundation for S. 1329.

We do, however, have concerns with several provisions of S. 1329. In particular, we reiterate our strong belief in the importance of taking immediate direct action to reduce Federal subsidies for wetlands destruction, and we urge that the Committee adopt the provisions of POWDR that would accomplish this. In addition, we must oppose the provisions of S. 1329 that would earmark import duties on arms and ammunition and provide an automatic annual appropriation of \$75 million from the Land and Water Conservation Fund for Federal and State wetlands acquisition. Our views on these provisions, and a number of more technical concerns with S. 1329, are discussed in more detail below.

Extension of Wetlands Loan Act

We fully support title I of S. 1329, which would extend the authorization of appropriations under the Wetlands Loan Act for 10 years and forgive repayment of advances made under the Act. This will assure the purchasers of duck stamps that their contributions will continue to be used for the conservation of migratory bird habitat.

Admission Fees at Certain Refuge Units

Section 201(b) of S. 1329 would authorize use of a valid duck stamp or a valid Golden Eagle Passport as a permit for entry into designated refuges. We support the establishment of entrance fees at designated refuge units, but recommend that the provision allowing use of the Golden Eagle Passport for this purpose be deleted.

Currently, the Golden Eagle Passport is priced at \$10, which is the same price as proposed by S. 1329 for the duck stamp in hunting years 1984 and 1985. However, S. 1329 proposes to gradually increase the price of the duck stamp to \$15; POWDR

would raise the price to \$15 immediately. If the Golden Eagle Passport will constitute a cheaper multi-entry permit, there is obviously little incentive to purchase a duck stamp for entry into designated sites. Further, S. 1329 is silent on whether the proceeds of the sale of Golden Eagle Passport on refuges will be deposited in the migratory bird conservation fund (MBCF) or accrue to the Land and Water Conservation Fund (LWCF), as is currently the case for passports sold by the National Park Service and the Forest Service. The lower price of the passport and the payment of all proceeds into the LWCF could combine to substantially diminish the amount raised from refuge entrance fees directly for wetlands acquisition. We note that the Administration has previously proposed legislation to make the proceeds of passports sold at national parks available to the National Park Service for park rehabilitation and protection.

Another question raised by the sale of Golden Eagle Passports is whether administrative costs of their sale by refuge personnel would be defrayed. Section 201(h) of S. 1329 would require the sale of the passport, duck stamp, single-entry and group-entry permits at designated units. Section 201(c)(2) would allow 10 percent of the revenues from single-visit entry permits to be used to defray administrative costs and for the purposes for which the designated units have been established. This provision is also included in POWDR and we support the concept.

Traditionally, duck stamps have been sold at refuges as a service, with all proceeds accruing to the MBCF. However, two new dimensions have been added to S. 1329—the Golden Eagle Passport and group permits—and it is unclear whether 10 percent of the sale of these permits can be used to defray administrative and refuge costs.

Due to the problem of comparability inherent in using two multi-entry permits and our desire not to reduce the proceeds applied directly to wetlands conservation, we recommend that provision for the use of Golden Eagle Passports on National Wildlife Refuges be deleted from S. 1329. If this recommendation is not adopted, we strongly urge that the proceeds from the sale of Golden Eagle Passports on refuges accrue to the MBCF and that 10 percent of the proceeds go to the refuge itself.

We also recommend that subsection (c)(2) be amended to allow 10 percent of the receipts from the special admission permits authorized under this section to be used by the refuge for administrative and other purposes.

Subsection (g) would authorize the Secretary, among other things, to issue permits for owners of property within designated units in accordance with procedures and at fees established by the Secretary. We believe this should be clarified to recognize that these inholders have a right of access to their property that should not be subject to charge. In addition, we recommend that S. 1329 include language similar to that contained in the Land and Water Conservation Fund Act indicating that entrance fees should not be required of persons traveling through the unit on roads that are a part of a larger highway network.

Transfers to Migratory Bird Conservation Fund

Section 203 of S. 1329 would provide for the transfer of import duties on arms and ammunition to the MBCF for use in wetlands acquisition. The Administration

opposes this provision and section 204 of S. 1329, which would provide for an automatic annual appropriation of \$75 million from the LWCF to the MBCF.

Acquisition of wetlands with Federal funds is an important, but necessarily limited answer to the problem of wetlands loss. We do not believe it would be fiscally prudent to earmark these substantial additional sums for Federal wetlands acquisition. We believe that the additional revenues that would be provided to the MBCF by POWDR constitute a significant increase in the level of assured funding for these acquisition efforts. While we certainly consider additional Federal wetlands acquisition efforts among our highest priorities, we believe they must be pursued in the context of other pressing National needs. We therefore recommend that sections 203 and 204 of S. 1329 be deleted from the bill.

Financial Assistance to States for Wetlands Acquisition

As noted, we oppose the level of funding that section 204 would authorize for grants to States under title III of S. 1329. POWDR would provide assistance to the States at an annual level currently estimated at approximately \$15 million. This could increase as the States dedicate increasing amounts to wetlands conservation. We continue to believe that an annual authorization at this level of funding is the more fiscally prudent course.

In addition to more limited funding for this program, we also recommend that the grants to States not be limited to use for wetlands acquisition, as would be the case under S. 1329. There are many ways to conserve wetlands and the States should be encouraged to pursue all alternatives. Furthermore, without assistance for the administration of acquired areas, we would expect many States to be unable to accept assistance for acquisition. We strongly recommend that at least some percentage of any Federal aid funding be available to the States for wetlands conservation activities other than acquisition.

This title of S. 1329, as presently drafted, would establish a project review system similar to the review required by the Pittman-Robertson (P-R) and Dingell-Johnson (D-J) programs. It would require that the Secretary establish standards by which the program will be conducted and make careful reviews to ensure that all projects meet those standards before a project is approved, during its conduct, and after its completion.

We continue to prefer the State grants provision of our POWDR proposal, which would provide both the States and the Federal Government with maximum administrative flexibility without including such a project review system. Our experience with the States is that they are capable of effectively administering programs without a layer of Federal administrators reviewing every project. We would prefer to give the States maximum latitude in administering their own programs to meet the objectives of the Act without further Federal supervision, such as would be the case with the POWDR approach. Experience with the P-R and D-J programs has shown that from 4.5 to 5.2 percent is needed for administrative purposes. The P-R and D-J statutes provide 8 percent for administrative purposes. The D-J amendments currently pending in the Congress would provide 6 percent for these purposes. However, S. 1329 as drafted would authorize only one percent for administration. If the bill is enacted as drafted and the program is to support its

own administration, a minimum of 4 percent will be required. This is consistent with the State grants provision of POWDR.

S. 1329 would provide for a minimum of one-half of one percent of the total appropriation to go to each State. We believe, particularly in the event that the aid program remains limited to acquisition, that it would be beneficial to allow each State to decide whether it will avail itself of these benefits. This would prevent unused portions from lying dormant for two years. We also note that the term "State" is not defined in S. 1329, and it is unclear whether it is intended to include the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

The apportionment formula in the bill is based on the most recent year's obligation of funds by each State compared to the total of all States. While the use of this formula does encourage States to devote their own resources to acquisition projects, it could result in the loss of more significant wetlands located in States lacking financial resources for acquisition. This problem could be addressed by including a component in the formula that reflects the relative importance of wetlands in specific regions and allocates funds accordingly.

In addition, the use of this type of formula will probably cause the States difficulty in the effective planning of wetland acquisition projects because the amount paid to a State may vary widely depending on the amounts obligated by other States. The amount of money that a State may expect may thus not be as predictable as that of the P-R and D-J programs.

We believe this problem could be lessened in two ways. First, title III could authorize installment purchasing so that a State may acquire large tracts even though the apportionment may be quite different than expected. Second, an additional year of availability of the total national unused balance could be allowed for those States that have used all of their original apportionment. This supplementary apportionment would be made available from those States unable to obligate sufficient funds to use their entire apportionment. Any funds remaining after this third year of availability would be available for the MBCF.

Wetlands Inventory and Trend Analysis

Title IV of S. 1329 would accelerate the National Wetlands Inventory, require an update of the trend analysis every 10 years and require a report to Congress on the causes of wetlands destruction, particularly the effect of Federal expenditures.

As already noted, we continue to strongly prefer the POWDR approach of beginning to reduce Federal subsidies for wetlands destruction now. Further, we can proceed with this important effort without additional authorizing legislation for the National Wetlands Inventory. We have sufficient existing statutory authority for this inventory and we are proceeding with it. By the end of this fiscal year, approximately 30 percent of the lower 48 States, and 6 percent of Alaska, will be mapped. We plan to have all of the priority wetland areas in the United States and much of those in Alaska inventoried by 1988. We are also looking for ways to accelerate this schedule further with assistance from other Federal agencies, State and local governments, and the private sector.

In addition, the schedule mandated by S. 1329 would be extremely costly and, we believe, unnecessarily so. While the \$3 million annual authorization provided in section 401(b)(3) of S. 1329 for the trend analysis could, based on realistic cost estimates, be reduced to \$900,000 per year, an authorization of \$14.5 million per year would be necessary to carry out the provisions of section 401(a)(1) rather than the \$7 million per year provided by section 401(b)(1). Similarly, \$6.75 million per year would be necessary to carry out sections 401(a)(2) and (3), beginning on October 1, 1986, rather than the \$5 million per year provided by section 401(b)(2), beginning October 1, 1987. In sum, acceleration of priority area mapping by two years, as required by S. 1329, would more than double the cost of the inventory. For this reason, we strongly oppose acceleration of the National Wetlands Inventory under S. 1329.

The problem is immediate; acceleration of the National Wetlands Inventory is neither cost-effective, nor is it the real solution. With the information we already have today, however, we could begin to put the POWDR plan of action into effect promptly upon its enactment.

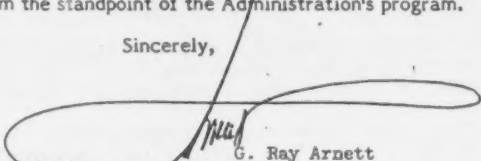
If, however, our approach is not adopted in S. 1329, we recommend the deletion of the word "final" as it is used to require completion of "final" inventory maps. These maps will be continuously updated, in the manner of U.S. Geological Survey topographical maps, and, because of the dynamic nature of wetlands, will never be considered "final."

Conclusion

We commend the Committee for moving to address many of the critical issues of wetlands conservation. While we do have several remaining concerns with S. 1329, we are pleased that the bill incorporates most of the concepts we included in our POWDR proposal. We would welcome the opportunity to work with the Committee to develop specific language to address the concerns we have raised in this report and hope to continue to work closely with the Committee to achieve our common goal—the conservation of the Nation's valuable wetland areas.

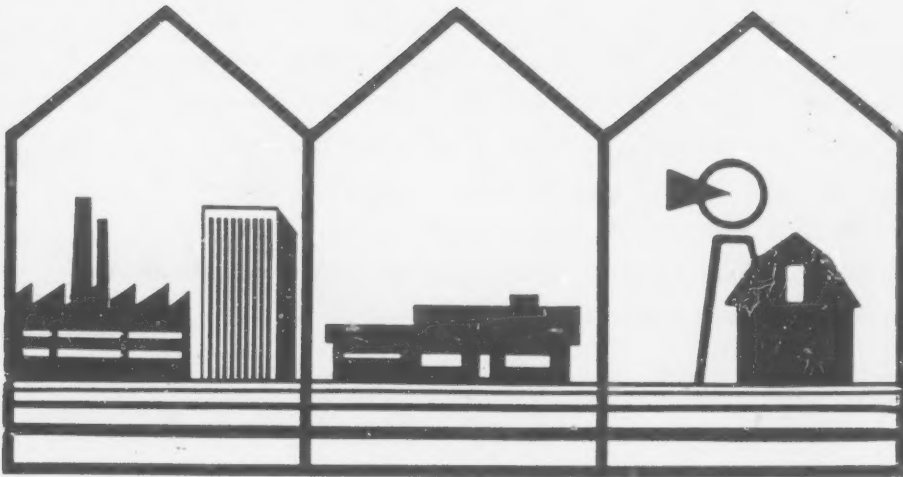
The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,



ASSISTANT SECRETARY

G. Ray Arnett



Statement of the
NATIONAL ASSOCIATION OF REALTORS®
 THE WORLD'S LARGEST TRADE ASSOCIATION

TO: SENATE SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

ON: THE "PROTECT OUR WETLANDS AND DUCK RESOURCES ACT,"
 S. 978, AND THE "EMERGENCY WETLANDS RESOURCES ACT,"
 S. 1329

BY: LAWRENCE YOUNG

DATE: JULY 12, 1983

My name is Lawrence Young, and I am a REALTOR® from South Padre Island, Texas, and a member of the REALTORS® Legislative Committee. Accompanying me today is Thane Young, Director of Environmental and Energy Affairs of our Government Affairs Division. I am here on behalf of over 600,000 members of the NATIONAL ASSOCIATION OF REALTORS®. The Association appreciates this opportunity to express its views before this subcommittee on the pending wetlands protection legislation, S. 978 and S. 1329.

PROTECT OUR WETLANDS AND DUCK RESOURCES ACT, S. 978

Mr. Chairman, the NATIONAL ASSOCIATION OF REALTORS® is opposed to enactment of the "Protect Our Wetlands and Duck Resources Act," S. 978 and its House companion, H.R. 2268. This legislation, better known as the POWDR bill, is patterned after the Coastal Barrier Resources Act of last year. Like the Coastal Barrier Resources Act, the POWDR bill is aimed at denying development opportunities in wetland areas by eliminating almost all forms of federal assistance in those areas -- including federal flood insurance, sewage treatment grants, FHA and VA loans. We oppose the POWDR bill for many of the same reasons we opposed the Coastal Barrier Resources Act. Our reasons include the following:

(1) The POWDR legislation will deny private property owners reasonable use of their land. The abrupt changes in public policy with regard to federal financial assistance will create economic hardships for landowners. Although proponents of POWDR argue that the legislation does not prohibit property owners from building on

their land, the legislation effectively denies development opportunities by prohibiting almost all forms of federal involvement for development. This includes federally assisted construction or purchase of structures, infrastructure or facilities.

Once development opportunities are withdrawn and federal flood insurance prohibited, owners will find it difficult -- if not impossible -- to obtain financing to improve their property. As you well know, Mr. Chairman, flood insurance coverage is a standard prerequisite for lending in flood hazard areas whether required under law or not. The prospects of private insurance companies filling the void are very slight. Thus, the environmental "public benefit" of this legislation will be extracted from the investment and property rights of private landowners.

(2) The POWDR bill will not only deny reasonable use of private property, but it will also adversely affect local communities with wetland areas. The legislation will override local land use planning and management. In addition, it will retard growth opportunities, thus having a detrimental effect on local economies. Consideration should be given to the effects such a dramatic shift in federal policy will have on the tax base of local communities. The "public benefit" derived from denying development opportunities may well fall short of the benefits gained from allowing reasonable development of wetland areas.

(3) While we recognize that there are wetlands of significant environmental value which need to be protected, the POWDR bill is both premature and excessively sweeping in its application. POWDR establishes the Protect Our Wetlands and Duck Resources System

which is to be comprised of undeveloped wetlands of five acres or more. It directs the Secretary of the Interior to identify wetland areas to be included in the POWDR system and at the same time prohibits any new federal expenditures in system units. Yet the legislation contains no definition of wetlands nor does it clearly specify the type of wetlands to be designated. The Interior Department estimates that 86.8 million acres of wetlands are in private ownership. Conceivably then, thousands of private landowners with holdings on lakes and streams throughout the country could be affected by this legislation. Congress should not take such dramatic action as that proposed in the POWDR bill without first knowing which areas of the country will be impacted.

(4) POWDR assumes all wetland areas are unsuitable for development. Yet development of wetland areas does not necessarily pose a risk to the surrounding areas or to the wetlands themselves. Although some wetland areas may require protection, this all inclusive legislation is excessive in restricting development for all undeveloped areas.

From an environmental perspective, the bottom line is acquisition. If Congress determines the remaining developable wetlands are so essential to preserve in a natural state, the only equitable and environmentally sound alternative is acquisition. As an Association, we generally do not support acquisition; however, in this case acquisition is more just than the indirect denial of property rights and land use control that the POWDR legislation would establish.

EMERGENCY WETLANDS RESOURCES ACT, S. 1329

Mr. Chairman, although we are concerned about the ramifications of S. 978, the NATIONAL ASSOCIATION OF REALTORS® considers this "Emergency Wetlands Resources Act," introduced by Senator Chafee, to be a more balanced approach to the wetlands issue than the POWDR legislation. However, we would recommend that the Subcommittee carefully consider the bill's provisions for wetlands acquisition, inventory and trend analysis.

The proposed legislation calls for a substantial increase in funding for federal acquisition of wetlands. We are concerned about the budget impact of this provision which would authorize the expenditure of as much as one billion dollars over the next ten years. With burgeoning federal deficits threatening the viability of the national economy -- and the real estate industry in particular -- we are skeptical of any legislation to further increase federal spending.

As stated earlier, our Association does not generally support federal acquisition of private property. However, if acquisition is considered essential to preserve wetlands, we urge acquisition through the Migratory Bird Conservation Fund which authorizes purchases only from willing sellers. In acquiring wetlands, it is essential for private property protection that condemnation not be utilized.

This Subcommittee should establish a wetland acquisition policy which ensures a process responsible to private property owners who own approximately 90% of U.S. wetlands. We emphasize this concern because of problems which have arisen in the past due to the lack of a responsible federal land acquisition policy. In the

past, government agencies have not critically determined what lands to purchase, but instead have bought as much land as possible as funds have been made available. Without project priorities for acquisition, some unessential lands have been acquired. Costs of acquiring the land and the impact on the community and private owners have been ignored. This has resulted in not only higher costs to the government, but undue hardships on landowners and local communities. Practical hardships are often imposed on property owners who have been placed in "limbo" of having their land identified for federal acquisition but not actually purchased. Sometimes property owners wait years before their land is finally acquired.

In establishing a responsible wetlands acquisition policy, we would recommend the following:

- (1) A systematic review of environmentally sensitive wetland areas should be conducted to determine which lands are actually essential for acquisition and then set priorities for acquiring only those essential lands;

- (2) A time constraint should be implemented to ensure timely acquisition between the authorization of a federal acquisition and actual appropriation of funds for purchasing the land;

- (3) Alternatives to fee-simple acquisition should be considered for appropriate tracts of land. Such alternatives could include land exchanges, leasing agreements or purchasing of easements.

The Emergency Wetlands Resources Act establishes deadlines for completing the National Wetlands Inventory Project already

in process and calls for a trend analysis of wetland development.

While an inventory and study of wetlands might be appropriate, we consider it imperative that wetland owners be cognizant of federal actions to include their property in this inventory. Based on our experience with the mapping process of coastal barriers, we believe affected property owners must be informed of the inventory and should be permitted to participate in any mapping process from the earliest stages. Property owners should be personally notified of government actions affecting their property. In a recent Supreme Court decision, Justice Thurgood Marshall stated, "Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party."

In addition, S. 1329 requires the Secretary of the Interior to prepare a report on wetland degradation, including an analysis of the environmental and economic impact of eliminating or restricting future federal expenditures and financial assistance in wetland areas. We believe the study must consider the impact of such action on private property values and on the economies of affected local communities. We strongly recommend that this aspect of the study be written into the legislation.

TAX INCENTIVES FOR DONATING WETLANDS

Mr. Chairman, the NATIONAL ASSOCIATION OF REALTORS® has noted with interest the intentions of several members of Congress, including Representative Forsythe and yourself, Senator Chafee, to

investigate potential tax incentives which would encourage private property owners to donate title to wetlands or easements for conservation purposes.

Increasingly, owners of wetlands would like to donate their holdings to the state or federal government or to a nature conservancy, but they have been unable to obtain the appropriate tax incentive. For instance, not only is a taxpayer's total annual land deduction limited to 30% of adjusted gross income, but the fair market value of donated land is determined without consideration of public or environmental benefits. In many cases, the appraised fair market value of wetlands amounts to so little -- often less than \$100 an acre -- that there is no incentive for the owners to make the donations. We therefore encourage Congress to explore the idea of providing more realistic tax incentives to those property owners who are willing to donate wetlands for preservation purposes.

CONCLUSION

In summary, Mr. Chairman, the NATIONAL ASSOCIATION OF REALTORS® urges this subcommittee to oppose S. 978, the "Protect Our Wetlands and Duck Resources Act" because it will deny reasonable use of private property and will override state and local land use planning and management. We consider S. 1329, the "Emergency Wetlands Resources Act" to be a better alternative to the wetlands issue since it calls for a thorough study of wetlands development and an evaluation of management alternatives before proposing any final action.

Once again, we urge the Subcommittee to consider the following under S. 1329:

- (1) A timely and prudent acquisition process which allows for the purchase of only essential wetlands purchased from willing sellers;
- (2) Adequate notification and allowance for comment of property owners affected by the wetland inventory and analysis;
- (3) A wetland study which analyzes the impact of withdrawing federal expenditures and financial assistance on property values and on local community economies; and
- (4) More realistic tax incentives to encourage willing donation of wetlands for conservation purposes.

Again, thank you, Mr. Chairman, for the opportunity to express the NATIONAL ASSOCIATION OF REALTORS®' views on these important issues. I am prepared to answer any questions you might have.

The NATIONAL ASSOCIATION OF REALTORS® is comprised of more than 1,806 local boards of REALTORS® located in every state of the Union, the District of Columbia, and Puerto Rico. Combined membership of these boards is over 600,000 persons actively engaged in sales, brokerage, management, counselling, and appraisal of residential, commercial, industrial, recreational and farm real estate. The activities of the Association's membership involve all aspects of the real estate industry, such as mortgage banking, home building, and commercial and residential real estate development, including development, construction and sales of condominiums. The Association has the largest membership of any association in the United States concerned with all facets of the real estate industry.

Elected Officers are: President Harley W. Snyder, Valparaiso, Indiana; President-elect Donald H. Treadwell, Sr., Southgate, Michigan; First Vice President David Roberts, Mobile, Alabama; Treasurer Budd Krones, Tucson, Arizona.

The Chief Administrative Officer is Jack Carlson, Executive Vice President and Chief Economist.

The Senior Vice President, Government Affairs is Albert E. Abrahams and the Vice President and Legislative Counsel, Government Affairs is Gil Thurm.

Headquarters of the Association are at 430 North Michigan Avenue, Chicago, Illinois 60611. The Washington Office is located at 777 14th Street, N.W., Washington, D.C. 20005. Telephone (202)383-1000.





NATIONAL ADVISORY COMMITTEE
ON
OCEANS AND ATMOSPHERE
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

STATEMENT

by

Sharron Stewart, Member
National Advisory Committee on Oceans and Atmosphere (NACOA)

before the

Subcommittee on Environmental Pollution
Committee on Environment and Public Works
U.S. Senate

July 12, 1983

Mr. Chairman and Members of the Subcommittee:

I am pleased to speak today on behalf of the National Advisory Committee on Oceans and Atmosphere. NACOA is a non-Federal, 18-member body, appointed by the President. Members represent industrial, scientific, and environmental concerns associated with marine, atmospheric, and coastal zone matters. Our enabling legislation, Public Law 95-63, mandates that we advise both the President and Congress on these matters.

We appreciate this opportunity to present our views on wetlands protection. NACOA recently reviewed current and proposed laws, regulations, and Federal agency programs designed for conservation of wetlands. We have positions on S.978, the Administration's proposed "Protect Our Wetlands and Duck Resources Act," and on S.1329, the "Emergency Wetlands Resources Act" offered by Senator Chafee. I will also present some NACOA recommendations on national wetlands policy.

Findings

Only 5.2 percent of the Nation's wetlands are in coastal areas and therefore within the purview of NACOA's mandate. Our review showed, however, that coastal wetlands policy cannot adequately be addressed separately, because funding mechanisms, for acquisition, legislative and regulatory approaches, Federal agency programs, and national treaty obligations concerning migratory bird habitat, all have traditionally included both inland and coastal wetlands. NACOA's position on coastal wetlands protection is thus couched in terms of national wetlands policy.

Wetlands are important to the general public for fish and wildlife habitat, flood control, erosion control, coastal storm damage control, groundwater supply and filtering, and recreational activities. Despite the recently recognized value of these swampy or marshy areas, surveys by the Department of the Interior estimate that man-induced wetland losses are about 500,000 acres annually nationwide.

Four basic approaches are currently used or proposed for wetlands protection:

- ° acquisition of wetlands property,
- ° regulation of landowners' usage of their wetlands property,
- ° prohibition of Federal development funds for roads, sewers, and similar infrastructure in mapped wetlands areas, and
- ° tax incentives for landowners who donate wetlands property or easements to government or private conservation groups.

Despite decades of Federal wetlands acquisition, only about 10 percent of the Nation's wetlands are under Federal ownership. Legislation governing wetlands regulation under the Clean Water Act does not address many of the activities (such as clearing and draining) that are responsible for major wetlands losses. Tax incentives for wetlands protection are weak -- with legal costs

of easement or title transfer sometimes outweighing the gains from tax writeoffs -- and the tax code still includes strong incentives for some activities, such as drainage for agricultural purposes, which often lead to wetlands destruction.

Recommendations

NACOA's position on wetlands policy is as follows:

1. With about 90 percent of the Nation's wetlands under private ownership, overemphasis on acquisition is impractical, because it is expensive and time consuming. Government acquisition of wetlands should continue but should be focused on high-priority wetlands areas.
2. In addition, with so much private ownership, Federal or State regulation of private landowners' usage of wetlands will always be controversial. Some regulation is necessary, because all wetlands cannot be acquired, but it should be balanced with other approaches so that regulation can be minimized.
3. The concept of prohibiting Federal funds for development in wetland areas has merit but should be studied further before implementation. (See position on POWDR bill, page 5.)
4. Tax incentives for private landowners who donate property or easements for preservation purposes is the soundest approach and should be most strongly emphasized. This approach presumably puts more wetlands acreage under ownership or control of government or private conservation groups at less cost than outright acquisition. It also encourages rather than imposes usage controls. We believe Federal economic benefits accrued from wetlands protection -- such as increased fishery export potential and reduced flood disaster claims -- might well outweigh the loss of tax revenues. These potential benefits should be studied and documented.
5. For the reasons outlined above, we believe the tax incentives approach to wetlands protection deserves high priority attention. Regulation probably

deserves second priority attention, because private landowners hold about 90 percent of the Nation's wetlands. Acquisition is necessary, but it should not be the primary approach. The concept of prohibiting Federal funds that encourage wetlands development, though limited in scope, has merit and deserves further consideration.

6. Wetlands regulation should be broadened. The Clean Water Act's §404 now regulates only discharge of dredge and fill materials into the waters of the United States. The Act should be amended, or new legislation passed, to cover other causes of wetlands losses, such as excavation, clearing, draining, etc. Because the Clean Water Act seeks to protect the chemical, physical, and biological integrity of the waters of the United States, it can be considered a reasonable vehicle for expanded Federal regulation of wetlands.
7. Wetlands legislation should authorize funds for accelerated Federal efforts to complete wetlands inventories and to attach public value to various kinds of wetlands -- for commercial fisheries, flood protection, etc. A system can be developed similar to that used by ecologist Dr. Eugene Odum, which is being tested in a current court case. The inventory should then include categories or priorities to be assigned to all wetlands areas. These priorities and values would then be used in making decisions concerning acquisition, regulation, and tax incentives.

Positions on proposed legislation

In addition to these recommendations, NACOA also adopted specific positions on two proposed wetlands bills. Secretary of the Interior James Watt proposed a wetlands protection bill, "Protect Our Wetlands and Duck Resources (POWDR)," which was introduced for the Administration in April 1983 by Senator John Chafee (S.978). In May 1983, Senator Chafee introduced his own version of wetlands legislation in S.1329.

° Protect Our Wetlands and Duck Resources (POWDR) S.978.

NACOA supports the Title III extension of the Wetlands Loan Fund for Federal acquisition of wetlands property; and the Title IV proposals for increased wetlands acquisition funds through entrance fees for the National Wildlife Refuge System and increased costs for annual duck hunting licenses.

Title I introduces a new concept in wetlands protection -- prohibiting the use of Federal funds for infrastructure development in areas designated and mapped as wetlands. NACOA believes this concept has merit, but passage of the bill at this time would be premature because of the incomplete status of wetlands mapping projects. We are also concerned that the bill will be an ineffective wetlands protection tool, because of the extensive list of activities that are exempted from control.

° Emergency Wetlands Resources Act - Chafee S.1329.

NACOA supports the Chafee bill, including: extension of the Wetlands Loan Fund; increases of about \$140 million annually in wetlands acquisition funds (through refuge entrance fees, increased duck stamps, and transfer of import duties on arms and ammunition) and especially through transfer of \$75 million annually for 10 years from the Land and Water Conservation Fund; transfer of \$50 million annually to States for wetlands acquisition; and accelerated completion of the wetlands mapping and inventory projects. We do, however, recommend two modifications to the bill:

- ° that a valuing or priority rating for wetlands be added to the inventory process, so that decisions regarding Federal wetlands acquisition can be made based upon their relative value to the public. This system of valuing or priority rating wetlands could be incorporated in other legislation to be used as a basis for decisions on wetlands regulation and/or tax incentives.

- ° that the Department of the Interior not have sole responsibility for the National Wetlands Inventory, but be required to do its mapping -- and especially its valuation and priority rating of wetlands -- in consultation with other agencies involved in wetlands protection, including the Environmental Protection Agency because of its clean water responsibility; the Army Corps of Engineers because of its §404 wetlands regulation authority; and the National Oceanic and Atmospheric Administration because of its fishery habitat responsibility and its ties with the State coastal management agencies.

Summary

In summary, NACOA believes wetlands mapping and inventorying should be accelerated and should include a scheme of categorizing wetlands according to their value to the public. Tax incentives for donation of wetlands property or easements should be strongly emphasized, because this approach protects more wetlands at less cost than Federal acquisition, and it encourages rather than imposes controls on wetlands usage. Wetlands regulation should be broadened. Discharge of dredge and fill materials are the only activities currently regulated, but clearing, draining, and other activities causing wetlands losses should also be regulated, at least in wetlands categorized as having high public value. Because acquisition is costly and time consuming, it should not be over-emphasized as a wetlands protection approach; acquisition should be focussed on wetlands of highest public value. The increased funds for wetlands acquisition proposed in Senator Chafee's bill, S.1329, seem an appropriate level of Federal investment in acquisition. Prohibition of Federal funds for development in wetlands as proposed in S.978 is premature.

That concludes my formal remarks, Mr. Chairman. I would be pleased to answer any questions the Subcommittee may have.



NATIONAL ADVISORY COMMITTEE
ON
OCEANS AND ATMOSPHERE
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

September 19, 1983

The Honorable John H. Chafee
Chairman, Subcommittee on Environmental
Pollution
312 Dirksen Senate Office Building
Washington, DC 20510

JH
Dear Senator Chafee:

On July 12, 1983, the National Advisory Committee on Oceans and Atmosphere (NACOA) testified before the Subcommittee on Environmental Pollution concerning wetlands protection. In this testimony, we recommended that the Federal wetlands conservation program place strongest emphasis on tax incentives for private landowners who donate property or easements for preservation purposes. NACOA also recommended that the Federal effort should include a system to assign public value to various kinds of wetlands, based on their contribution to commercial fisheries, habitat, flood protection, groundwater rejuvenation, etc.

During that hearing, NACOA was asked to provide some additional information to the Subcommittee, and I am pleased to forward our comments in the following areas:

Tax Incentives

NACOA's recommendations for additional tax incentives to be incorporated into legislation to protect wetlands are outlined in Attachment (1).

Federal Agency Responsibilities

Attachment (2) contains NACOA's recommendations concerning minor changes to Federal agency responsibilities for wetlands.

Wetlands Valuation Schemes

Included in Attachment (3) is information on wetlands valuation schemes requested at the hearing.

Additional Considerations and Suggestions

Attachment (4) outlines 3 additional approaches to wetlands management and conservation which we believe merit consideration by the Subcommittee.

We appreciate the opportunity to present these additional views on wetlands protection, and request that this letter be made part of the hearing record.

Sincerely,

JH

John A. Knauss
Chairman

Attachments

Attachment 1
Tax Incentives for Wetlands Protection

NACOA recommends that the following additional tax incentives, many of which are included in Senate bill S.1675, The Public Lands Acquisition Alternatives Act of 1983, be specifically incorporated into the legislation to protect wetlands:

1. Increase the charitable tax deduction limitation from 30% to 50% for land gifts that are made for conservation purposes, such as wetland protection.
2. Allow a 20% tax credit, dollar for dollar, for qualified land gifts.
3. Increase the capital gain deduction from 60% to 70% for conservation land gifts.
4. Clarify the definition of "like-kind" property (under section 1031 of the Internal Revenue Code) to permit the tax-free exchange of a conservation easement for another interest in real property.
5. Allow a taxpayer to defer payment of taxes on sales of conservation lands, such as wetlands, if the sale proceeds are reinvested in like-kind property within a 3-year period. (This 3-year tax deferral is presently permitted for the sale of property under threat of condemnation, but does not apply to a regular sale of conservation land to the Government.)
6. Allow an estate to satisfy its tax liability to the Federal Government by donating the full fee title interest or a partial title interest, such as a conservation easement in conservation lands, in lieu of estate taxes.
7. Allow a donor's estate to take the unused portion of a lifetime charitable contribution as an estate tax deduction.
8. Allow a landowner the charitable contribution deduction for the donation of the entire interest of land, except for the surface minerals and surface access to them.

Attachment 2
Federal Agency Responsibilities

NACOA's statement at the July 12, 1983 hearing recommended that a valuation and priority rating process for wetlands be incorporated as part of the conservation and preservation effort. In this context, we further recommend the following:

1. The National Oceanic and Atmospheric Administration (NOAA) should do the valuation and priority rating for coastal wetlands -- working closely with the Coastal Zone Management programs of the States.
2. The Department of Interior, within its overall responsibility for the acquisition of wetlands, should be specifically required to consider NOAA's valuation and priority ratings when making decisions regarding coastal wetlands acquisition.

Attachment 3
Wetlands Valuation Schemes

(The following paragraphs describe examples of wetland valuation schemes, as requested by the Subcommittee.)

Several methods have been developed by scientists and resource managers to assess the value of wetlands. These models have been found to be too limited (geographically, etc.) in their present form to be applied in a general way.¹

Two valuation systems of interest, however, are the method developed by the Federal Highway Administration (FHWA) and the technique advocated by Dr. Eugene Odum of the University of Georgia. The FHWA system looks at a wide variety of functions performed by a particular wetland and, on that basis, sets a relative value (or priority) to the area. It is a qualitative method, and does not attempt to assign dollar value. The Odum method looks at the primary production (the energy produced through photosynthesis) of the wetland and uses it to determine the public (non real estate) dollar value.

FHWA Functional Assessment Method ²

The FHWA Wetlands Functional Assessment Method, developed in conjunction with 26 other agencies/groups, is a qualitative, systematic approach to ranking the significance of wetlands in an attempt to set priorities for a wetlands conservation effort.

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1. U.S. Water Resources Council. 1981.
Analysis of methodologies used for the assessment of wetlands value.
Prepared by the U.S. Army Engineer Waterways Experiment Station, U.S.
Army Corps of Engineers. 68 p.
 2. Federal Highway Administration. 1983.
A method for wetland functional assessment, Volume 1. FHWA-IP-82-23.
176 p.

The method looks at 12 functions of wetlands --

- ground water recharge and discharge
- shoreline anchoring
- dissipation of erosion energy
- flood storage and floodwater desynchronization
- sediment trapping
- nutrient retention and removal
- food chain support and nutrient export
- habitat for fisheries
- habitat for wildlife
- active recreation
- passive recreation
- heritage value

For each of these functions, three aspects are considered: 1- the opportunity for the wetland to perform a function, 2- the wetland's effectiveness at performing the function, and 3- the significance of the function to society. The technique can be performed at three levels of detail -- a "quick and dirty" evaluation, an evaluation after one day of field work, and a more intensive field investigation prior to evaluation.

The FHWA Method is viewed by the Army Corps, FHWA, and the Fish and Wildlife Service as the most promising for meeting their needs. The State of Wisconsin has already begun using it, and several other States and regional organizations have expressed interest. The Corps is studying a refinement of the method which it expects to have in place within five years.

The major problems in the method, which will require considerable research to resolve, are in the areas of groundwater recharge and discharge, food chain support, and nutrient export; the model's shortcomings reflect our general lack of knowledge in these three areas.

Odum's Method ^{3,4}

The system developed by Dr. Eugene Odum, and other wetland researchers, attempts to avoid the complex process of evaluating all of the services provided by a wetland. The model looks at a single common denominator, energy production by photosynthesis, and assumes that all of the functions performed by a wetland area will be reflected in the area's primary production.

The annual energy production is converted to dollars, using the conversion ratio of energy units to dollars for petroleum. This annual value for the "goods and services" provided is income capitalized to obtain the property value.

The system was developed for coastal wetlands in Georgia, South Carolina, and Louisiana, where values of \$20,000 to \$40,000 per acre were derived. Odum's method is currently being tested in three court cases, because of disagreements between landowners and the Internal Revenue Service concerning the assessed value of their wetlands. The value determined by Odum's method is as much as 40 times its real estate value.

It is important to note that the value derived by Odum's method is not a real estate value, but the land's public value (i.e., the "goods and services" it provides to the general public). In property transactions, the value used would still be the real estate value. Dr. Odum has suggested that the method should be used for assessing value for tax purposes, arguing that an assessed value as much as 40 times the real estate value would be a substantial incentive for landowners to donate land for wetland preservation.

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3. Gosselink, J.G., E.P. Odum, R.M. Pope. 1974.
The value of the tidal marsh. Center for Wetland Resources, Louisiana State University, Baton Rouge. LSU-SG-74-03. 30 p.
 4. Odum, E.P. 1978
The value of wetlands: a hierarchical approach. In: Wetland functions and values: the state of our understanding. Greeson, Clark, and Clark, Editors. Proceedings of the National Symposium on Wetlands, American Water Resources Association. p. 16-25.

Attachment 4
Additional Approaches to Wetlands Conservation

The following discusses 3 additional approaches to wetlands management and conservation for which NACOA makes no recommendation, but believes merit consideration by the Subcommittee. These approaches should be viewed as complements to the existing wetlands program, rather than as substitutes.

1. A Federal "payment in lieu of property tax" program -- transferring Federal money to local governments to subsidize decreases in property taxes for wetlands conserved

Current tax incentives, and those discussed in Attachment (1) apply only to Federal income tax provisions when land is sold or donated to the Federal Government or a conservation group. A more effective method of wetlands preservation might be for the individual to retain ownership of the land, but receive a sufficient incentive to preserve it through a reduction in his property tax. Such a program would reduce the cost to the Federal Government, by transferring the burden of management to private landowners or to the States, and might attract more land to a conservation program since it addresses the landowners' largest cost (property taxes).

The California Land Conservation Act of 1965 (the Williamson Act) offers a 60% to 80% reduction in property tax assessment in return for an agreement to restrict the use of the land for 10 or more years. It was originally intended to preserve agricultural lands near urban areas. It is still primarily an agricultural land program, with only a very small percentage of land under contract being conservation land. To withdraw from a Williamson Act contract, a landowner must either wait to the end of the 10-year contract period (nonrenewal) or pay a penalty equal to 50% of the assessed value of equivalent, non-contracted land for an immediate cancellation.

A Federal "Williamson Act", or "payment in lieu of property tax", program for wetlands conservation would require a long-term, restricted-use contract between the local government and the landowner, with State oversight. The local governments would receive Federal compensation for lost property tax revenues. Title II of the Emergency Wetlands Resources Act of 1983 (S.1329) provides for money from the Land and Water Conservation Fund to be given to the States for wetlands conservation purposes, primarily acquisition. This program for Federal assistance to the States could be expanded and used as a vehicle for a Federal "Williamson Act" program.

Implementation of such a program could present several problems. It would involve 3 levels of government and, therefore, could be difficult to administer. Also, the Federal payments would be subject to appropriation. Landowners and local governments would presumably be reluctant to enter into long-term, restricted-use contracts without a guarantee of prompt and full Federal payment. However, a Federal PLT program could represent a substantial percentage of revenues for local governments, and provide a broad base of support for the program in Congress.

Finally, while California's Williamson Act landowners are generally deriving income from their land, through farming or ranching, in addition to receiving a reduced property tax assessment, landowners under a Federal PLT wetland program would not. A simple reduction in property tax might not be a sufficient incentive for a landowner to preserve his land.

2. Direct Federal subsidy to landowners for wetlands conservation

As an alternative to tax incentives for wetlands conservation, the Federal Government could pay a direct subsidy to landowners to conserve wetlands. This subsidy would appear as a line item in the Federal budget, and would be subject to annual Congressional appropriation -- thus, clearly defining the level of conservation effort.

The effectiveness of direct subsidy would depend entirely on the appropriation level. Direct subsidy, unlike tax incentives, has no market influence; since a tax incentive is based on property value, it is influenced by the real estate market.

To prevent extreme fluctuations in the appropriations level and the program's effectiveness, the Federal Government and the individual would enter into a longterm contract of 10 or more years. The individual would agree to preserve the integrity of the land in exchange for receiving a sum of money annually for the contract period. As with California's Williamson Act, a landowner requesting non-renewal of a contract would have to maintain the integrity of the land for the remainder of the contract period, or be charged a substantial penalty (up to a total repayment of Federal money) for immediate cancellation.

Such a subsidy could be developed by expanding the Department of Agriculture's Water Bank program which leases wetlands and adjacent upland areas from farmers for waterfowl habitat preservation for a 10-year period. Existing contracts cover 187,000 acres of wetlands in 10 states; the major states being Minnesota, and North and South Dakota. Annual payments range from \$5 to \$10 per acre for wetlands (about \$55 per acre for upland areas) and are adjusted every 5 years to allow for inflation, etc. The Federal money is transferred to the State, then to the county, and finally to the farmer.

The program, initiated in 1972, is popular in the agriculture community, and requests for Water Bank contracts have surpassed available money. With contracts from the first years of the program now coming up for renewal, the \$8.8M appropriation level for fiscal years 1982 and 1983 must cover new commitments, payment adjustments, and renewals.

3. Linking wetlands conservation to Department of Agriculture subsidy programs

Another proposed approach to wetlands conservation is to link it with Department of Agriculture subsidies to farmers for idling part of their land. Since the major loss of wetlands is to drainage for agriculture*, and assuming we will continue to subsidize farmers for not growing crops, there is a substantial potential for wetlands preservation in such a scheme. Farmers could be given an incentive to preserve wetlands within the structure of Agriculture's Payment-in-Kind (PIK) and/or other subsidy programs.

Most of the wetland losses to agriculture are through drainage of bottomland hardwoods in the Southeast for soybean and rice cultivation. Rice farmers are eligible for both PIK and a combined acreage reduction and paid land diversion program. (Farmers must reduce their rice acreage by at least 20 percent to be eligible for payment under the latter program. By diverting an additional 10 to 30 percent of their acreage they can also receive payment-in-kind.) The soybean crop, however, is not included in any such programs.

* While most of this loss is in inland areas, a significant amount of coastal wetlands is also lost to agriculture.



NATIONAL WILDLIFE FEDERATION

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STATEMENT OF THE
NATIONAL WILDLIFE FEDERATION
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION
OF THE
SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
ON
WETLANDS CONSERVATION MEASURES
S. 1329 and S. 978

July 12, 1983

Submitted by:

Robert P. Davison, Ph.D.
W. Alan Wentz, Ph.D.
Fisheries and Wildlife Division
National Wildlife Federation

Mr. Chairman, I am Dr. Robert P. Davison, a wildlife scientist and legislative representative for the National Wildlife Federation's Fisheries and Wildlife Division.

I appreciate this opportunity to discuss wetlands conservation and to provide comments on S. 1329 and S. 978.

NWF is the world's largest conservation-education organization. We have over 4 million members and supporters throughout the U.S. and 51 affiliated statewide and territorial organizations. Since the formation of NWF in 1936, our members, affiliated organizations, and staff have supported and worked aggressively for the conservation of this country's wetlands. Our efforts continue today as we seek strong, comprehensive measures from this Congress to protect a rapidly vanishing national resource.

WETLANDS ARE VALUABLE

Wetlands are a valuable national resource. Waterfowl and other waterbirds are extremely dependent on wetlands throughout their life cycle. Sixty to 70 percent of the 10 to 12 million ducks produced annually in the coterminous United States breed in the prairie pothole states of Montana, North and South Dakota, Minnesota, and Nebraska. Ducks and geese form the base of an industry worth multi-millions of dollars annually through the expenditures of 2.5 million waterfowl hunters and an even larger number of bird watchers and other outdoor recreationists.

Many furbearing animals are dependent on wetlands. The total harvest of muskrats, mink, and nutria exceeded 8 million animals worth more than \$33 million in 1975-76.

The production of marine commercial and sport fish is extremely dependent on marsh and wetlands. In 1980 the National Marine Fisheries Service estimated that 62.7 percent of 6.7 billion pounds of commercial fish caught by American fishermen was dependent on estuarine areas and their associated wetlands.

In addition to such products, wetlands provide numerous services to the public. These services include flood control, buffering of storm damage, ground water recharge, purification of polluted water and recreation-aesthetic use.

THE PROBLEM

More than 90% of the wetlands outside Alaska occur on private lands in the United States. However, most of the values of wetlands accrue to the public at large. Consequently, the problem is that wetlands are a private resource that provide enormous public values. Although wetlands owners make profits by converting their wetlands, public values are lost or lessened.

Throughout most of the history of the United States, wetlands were looked upon as wastelands to be drained or filled and converted to other uses. Governmental policy was

directed primarily to elimination of wetlands until about the mid-1900s. During the 1930s, people began to recognize the links between wetlands loss and the disappearance of wetlands products, such as waterfowl. By the 1950s and 1960s, the wetlands acquisition programs of state and federal wildlife agencies were well established, the broad values of wetlands were becoming clear, and sportsmen had formed a solid constituency for wetlands. During this period many of the governmental policies that fostered wetlands destruction began to change. However, wetlands loss continued. In the 1970s the values of wetlands became widely recognized and scientifically documented. Many of the direct subsidies for wetlands drainage were eliminated, but indirect subsidies remained and wetlands drainage was and is still a critical problem.

In the most comprehensive and scientific study done to date, the U.S. Fish and Wildlife Service estimated that the total average loss of wetlands in the coterminous United States from the 1950s to the 1970s was 458,000 acres per year. [Status and Trends of Wetlands and Deepwater Habitats in the Coterminous United States, 1950s to 1970s, Office of Biological Services, Washington, D.C.] Over 9 million acres of wetlands were lost in that 20-year period. The net average annual loss of inland wetlands over this period was 439,000 acres (or more than 95% of the total) with the remaining loss being coastal wetlands. Of the total coastal

wetlands loss of 372,000 acres from the 1950s to the 1970s, the majority was from Louisiana and most of the rest from Florida. However, certain estimates place the current loss of coastal wetlands in Louisiana at between 30 and 40 square miles per year, which is much greater than that reported in the Fish and Wildlife Service study.

Agricultural development (e.g., clearing and drainage) was responsible for 87 percent of the wetlands losses from the 1950s to the 1970s, while urban development and other development caused 8 percent and 5 percent of the loss, respectively. Agriculture had the greatest impacts on forested and inland marshes, with losses of 6.2 and 4.6 million acres, respectively, over the 20-year period. One million acres of shrub swamps were converted to agricultural use from the 1950s to the 1970s.

There still is considerable incentive in existing Federal (and most state) statutes and regulations to drain or otherwise convert wetlands to other uses. In most cases, property owners deduct the cost of draining wetlands from their taxable income. In other cases, Federal or state agencies offer technical assistance for private drainage or directly alter wetlands through development of major drainage networks, which are then used by adjoining private landowners. Drainage of wetlands for agricultural use is further enhanced by the availability of crop subsidy payments, price supports, and a variety of agricultural and disaster relief programs

for agricultural crops grown on converted acres. Large-scale irrigation, waterway, or hydroelectric projects also cause the drainage and destruction of large acreages of wetlands.

THE SOLUTION

Increased Acquisition

One important component in efforts to resolve the problem of wetlands loss certainly must be increased funding for state and federal acquisition programs.

On May 25, 1982, and again on April 18, 1983, NWF recommended measures to increase federal and state acquisition of wetlands in testimony before the House Subcommittee on Fisheries and Wildlife Conservation and the Environment. Our recommendations were to expand the Migratory Bird Conservation Fund (MBCF) through (1) extension of the Wetlands Loan Act and deletion of the provision that provides for repayment of the advances; (2) a graduated increase in the price of the Duck Stamp to \$15.00 over a five-year period or longer; (3) continuing annual appropriations from the Land and Water Conservation Fund for state and federal acquisition over a 10-year period; (4) authorization for the Secretary of Interior to require a Duck Stamp or a single visit fee for entrance into designated areas of the National Wildlife Refuge System; and (5) payment of duties on imported arms and ammunition into the MBCF.

Depending on land price increases, these funding

mechanisms should provide sufficient monies to purchase over the next ten years the 1.5 million acres that the FWS has determined most important to migratory bird conservation.

S. 1329 largely incorporates the five proposals to increase federal and state acquisition of wetlands outlined above. S. 978, by comparison, does not provide LWCF funds for federal acquisition; provides only authorization, not continuing LWCF appropriations for state acquisition; does not earmark present import duties on firearms and ammunition for the MBCF; and calls for an immediate doubling in the price of the Duck Stamp, which would likely be counterproductive.

We support the acquisition provisions of S. 1329. They are in almost every instance superior to those of S. 978. However, we make a number of recommendations to improve S. 1329.

We recommend that S. 1329 be amended to change the method by which LWCF funds are apportioned to the states from the MBCF.

S. 1329 allocates money to the states on a matching basis according to the amount of non-federal funds obligated to wetlands acquisition by the states during the most recent fiscal year for which the calculation of such funds is practicable.

We have talked with personnel in 40 state fish and wildlife agencies, and based on these conversations we believe this approach may present a number of difficulties. Under this method of apportionment, states without active acquisition programs in recent years or states with very limited programs are placed at a permanent disadvantage for the life of the emergency provision. Moreover, the apportionment does not seem likely to put money where acquisition is most needed nor where acquisition is most likely to occur.

There are other problems in determining the ratio used in S. 1329 as a basis for apportionment. In many states acquisition is not confined to one agency. In Florida, for example, wetlands are acquired by an appointed committee, the Freshwater Fish and Game Commission, the various water management districts, the Department of Natural Resources, and other agencies. Thus, the state's obligation of funds to wetlands acquisition may be difficult to determine. Furthermore, most states do not have specific wetlands acquisition programs. Rather, they acquire many types of lands other than wetlands. Often, wetlands are a small but important portion of larger tracts of land. To separate out the states' obligated funds for only the wetland portions could prove to be a difficult problem for many states.

Finally, precisely what constitutes an obligation of funds to wetlands acquisition presents many questions. Florida, for example, has been required by court order to buy back

certain submerged lands that were sovereign lands. Would funds used to purchase these lands count in computing Florida's share of the LWCF funds available under S. 1329?

We believe these problems could best be overcome by proportionally distributing the funds to the states based on their yearly commitment to obligate funds. Specifically each state should submit yearly a list of acquisition projects or wetlands acquisition segments of comprehensive plans to which it has obligated funds. Subject to his approval, the Secretary would apportion matching funds (75 percent) not to exceed \$50 million among the states for their acquisition projects or plan segments. Where requests by the states exceeded the available matching funds, the funds would then be apportioned among the approved requests on the basis of the ratio which each state's obligation of non-federal funds bears to the total amount of non-federal funds obligated by all the states in that year.

This method of apportionment distributes money equitably to the states so that each state gets a share of the matching funds that is proportional to their commitment and puts those funds where they are most wanted and likely to be used.

Regardless of the method of apportionment, NWF recommends that a state be allowed to include so-called "in-kind" or gift credits as obligated funds in their share of the cost of the project. Many states currently use this type of match to acquire lands under the Pittman-Robertson and Dingell-Johnson

programs. Other states such as Connecticut and Washington rely primarily on gifts or donations to acquire wetlands.

One final suggestion we would make in Title III of S. 1329 concerns the definition of the term 'wetlands acquisition.' NWF recommends that the definition be modified to: (1) specify that easements must be obtained in perpetuity; and (2) limit the amount that can be spent in administrative expenses to acquire wetlands.

Wetlands Inventory and Trend Analysis

NWF supports the expansion and rapid completion of the National Wetlands Inventory project of the U.S. Fish and Wildlife Service as provided in S. 1329. Efforts to conserve our nation's limited wetlands resources require sound information on the amount, types and distribution of wetlands as well as information on the trends in those wetlands parameters.

Although S. 978 calls for mapping the nation's wetlands to provide a basis for deciding which wetlands to include in the POWDR System, it does not specify how the mapping will be done or who will do it. Logically, S. 978 should have relied on the National Wetlands Inventory Project, because the Project already has mapped 26 percent of the country where man-wetlands conflicts are greatest. Use of these maps would accelerate implementation of the system envisioned in S. 978.

Conservation of Privately Owned Wetlands

According to the Fish and Wildlife Service, only 8.2 of the 99 million acres of wetlands remaining in the 49 states are under federal or state protection. Simply put, most wetlands are privately owned. While it is extremely important for active federal and state acquisition programs to continue, it is more important to provide mechanisms to maintain or restore wetlands that are privately owned. This should be done through a combination of (1) tax incentives for maintaining wetlands on private property, (2) tax or other incentives for donations of privately-owned wetlands to government agencies or conservation organizations, (3) incentives and assistance for restoration or creation of wetlands, (4) mitigation of wetlands loss due to publicly- or privately-supported development, (5) elimination of tax incentives for drainage and conversion, (6) elimination of all other governmental incentives and assistance that encourage wetlands destruction, and (7) a comprehensive wetlands regulatory program to protect the public interest.

According to Interior Secretary Watt, S. 978 "advances the common-sense approach that the destruction of these resource areas important to all Americans should not be underwritten and encouraged with Federal tax dollars." However, Title I of the bill prohibits few of the federal expenditures, assistance, subsidies, and activities that alter or assist in

the alteration of wetlands. Moreover, the prohibitions on federal expenditures that are included in the bill only apply to the relatively few wetlands that would fall within the "POWDR System." Those few wetlands that are eligible for the protection of Title I's provisions must meet the following criteria:

- o Undeveloped -- Only 'undeveloped' wetlands benefit from the federal expenditures prohibition, but what is undeveloped? Do fences, man-made dikes, dug ponds, habitat improvements, or miscellaneous man-made structures (such as boat docks) disqualify wetlands from protection? The bill doesn't say.
- o Environmentally significant -- The POWDR bill applies only to 'significant' wetlands but provides no criteria to distinguish between 'significant' wetlands and other wetlands. In fact, there is no adequate scientific basis for deciding which wetlands provide 'significant' wildlife habitat or contribute 'significantly' to fish and shellfish production, or to water quality. Also, the POWDR bill does not recognize wetlands that provide flood or erosion control as significant. In addition, judgments of importance should not be made on a wetlands-by-wetlands basis. A small wetland, for example,

may not provide 'significant benefits,' but a group or complex of small wetlands clearly does. The POWDR bill does not allow such a systems viewpoint.

- o Larger than 5 acres -- Nationwide, this size limitation excludes vast quantities of valuable wetlands. For example, in the prairie pothole region of central North Dakota, more than 80% of the wetlands are less than 3.2 acres (Cowardin et. al. 1981). Nearly 50% of the playa lakes in Texas, New Mexico, Kansas, Oklahoma, and Colorado are less than 4 acres (Guthery and Bryant 1982).

Title I of S. 978 also fails to provide protection for wetlands during the interim period between the time the bill is enacted and the time maps are finalized. This period may be from 5 to 10 years. As it stands, the bill's message is "convert your wetlands now before they are mapped and federal expenditures are prohibited." Interim protection is needed to begin to slow the annual rate of wetlands loss.

Moreover, although the Fish and Wildlife Service estimates that 87 percent of the wetlands loss from the 1950s to the 1970s was caused by agricultural development, S. 978 exempts major agricultural subsidies such as the commodity loans and purchases program and the cotton, feed grain, wheat, and rice stabilization (price support) programs. These programs,

administered by the Department of Agriculture, provide economic support to farmers based on the acreage planted to particular crops, and thereby encourage farmers to convert new lands, such as wetlands, into production. Also exempted are income tax provisions that allow developers to depreciate capital expenditures for draining and clearing wetlands at an accelerated rate. These provisions encourage conversion of wetlands by land speculators when it otherwise would not be economically feasible.

In addition to safeguarding agricultural subsidies, Title I of S. 978 also leaves untouched federal expenditures for construction, operation, and maintenance of federal water resource development activities, including channel improvements. Construction of Garrison Diversion Project, for example, will destroy tens of thousands of acres of wetlands.

Protection of wetlands within the POWDR System is further weakened by exemptions in Title I for many major activities responsible for the destruction and degradation of wetlands, including:

- o virtually any activity related to energy and mineral resources development that can be carried out only on, in, or adjacent to wetlands; and,
- o construction, maintenance, and replacement of public highways or facilities that are essential links in a larger network or system.

S. 978 does not authorize the Secretary of Interior under Section 503 of the bill to publish rules for the above exceptions. The Secretary of Interior should be required to issue rules; without them, there are no criteria to limit or define the bill's exceptions. Such decisions would be left entirely to Secretarial discretion. Finally, although S. 978 requires federal agencies to certify that they have complied with the Title I provision, the bill provides no criteria (or requirement for the Secretary of Interior to establish criteria) to define successful compliance.

While we believe that S. 978 deserves some recognition for attempting to address federal encouragement of wetlands destruction, the end result of the deficiencies outlined above is that the bill provides little, if any, meaningful protection for wetlands.

S. 1329, on the other hand, takes a sound but overly cautious step toward ending federal encouragement of wetlands destruction. NWF fully supports the report to Congress on wetlands losses and their causes that is called for in the bill. We certainly need to know more about what federal statutory and regulatory mechanisms induce wetlands destruction and degradation. And we need to know what environmental and fiscal impacts may result in the future from eliminating or restricting these mechanisms and from failure to eliminate or restrict these mechanisms. But the need to know more should not paralyze us for several more years. We already

know enough about what causes wetlands destruction and degradation to take some steps towards curtailing the federal role in the problem. For example, in a 1982 study University of Wisconsin agricultural economist Richard Barrows concluded that (1) there are significant economic and financial incentives for a landowner to drain a wetland rather than rent cropland or leave the wetland in its natural state; (2) the level of interest rates and drainage costs do not greatly affect the incentive to drain wetlands; (3) the level of commodity prices and yields exerts a large and important influence on drainage incentives; and (4) the federal income tax system increases the incentives to drain wetlands, and the strength of the tax incentive to drain increases as the landowner's income increases. [Barrows, R., Henneberry, D. and S. Schwartz. 1982. Individual economic incentives, the tax system and wetland protection policy: a study of returns to wetlands drainage in southeastern Wisconsin. Presentation at 1982 Summer Meeting American Society of Agricultural Engineers.]

Barrows and his colleagues found that federal tax policy provides an incentive to drain wetlands through the system of investment tax credits and conservation deductions and credits. Deductions against taxable income - up to 25 percent of a landowner's gross income - are given by the Federal government for the full cost of soil and water conservation practices, which are defined to include "the

construction, control and protection of diversion channels, drainage ditches, irrigation ditches, earthen dams, water-courses, outlets and ponds." Federal tax codes also allow a 10 percent deduction for capital depreciation applicable to drain tiles, and a 10 percent investment credit against federal taxes is available for the investment in drain tiles. According to Barrows, "These special incentives can increase the net after-tax income of the landowner. These provisions could mean the difference between a profitable and unprofitable land drainage project."

In short, there already exists ample evidence to require Federal agencies, to the maximum extent practicable, to minimize the destruction, loss, or degradation of wetlands. If we wait until the report to Congress is completed in late 1985, Congressional action will not come until 1986 or later. In the interim more than 1.5 million acres of wetlands will be lost.

We recommend that S. 1329 be amended to include and codify certain of the substantive provisions of Executive Order 11990 on the protection of wetlands. Specifically, Section 1(a) of E.O. 11990 should be codified because it presents a strong and positive statement on what the goals and role of Federal agencies should be towards minimizing the destruction of wetlands.^{1/} Moreover, a provision similar to Section 2(a) should be codified because it provides the vehicles through which these goals can be

realized. The Environmental Defense Fund has drafted such a provision that would require Federal agencies to seek reasonable alternatives and practicable modifications to expenditures and financial assistance that encourage wetlands conversion. We believe that these requirements are an important and necessary adjunct to the report to Congress, and we recommend that they be incorporated as a new title in S. 1329. In addition, each agency should be required to issue regulations implementing the provisions of this new title.

Thank you for the opportunity to present our views. NWF looks forward to working with the Subcommittee on S. 1329. We believe it is an excellent starting point.

1/ "Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvement; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities."

BEFORE THE
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

STATEMENT OF DR. WILLIAM Y. BROWN
ENVIRONMENTAL DEFENSE FUND

July 12, 1983

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to provide you with views of the Environmental Defense Fund, Inc. ("EDF"), the World Wildlife Fund - U.S. ("WWF"), the American Institute of Biological Sciences ("A.I.B.S."), the Center for Environmental Education ("CEE"), the Defenders of Wildlife ("DOW"), Friends of the Earth ("FOE"), the National Audubon Society ("NAS"), the National Parks and Conservation Association ("NPCA"), the Natural Resources Defense Council ("NRDC"), and the the Sierra Club on proposed legislation for the protection of wetlands.

The Subcommittee has heard ample testimony on the great value of wetlands for our society and on the stunning rate of 458,000 acres per year at which we are destroying these resources. No genuine dispute exists over the general truth of these observations. Opinions differ significantly, however, on

what should be done by the 98th Congress to set aside a healthy acreage of wetlands in perpetuity and to slow the tide of conversion running against the others. To succeed on the first front, our government must substantially increase expenditures for acquisition of property interests in wetlands that will ensure their conservation. To succeed on the second, we must effectively enforce existing laws for minimizing destructive uses of wetlands and we must establish new authorities to limit the destructive activities that have thus far gone uncontrolled.

Secretary of Interior Watt has properly identified wetlands protection as a legislative priority of the Administration. However, the "POWDER" bill that he has proposed, in combination with Administration policies on the use of existing authorities concerning wetlands, constitutes a retreat rather than an advance in wetlands protection.

The POWDER bill (S. 978; H.R. 2268) contains several mechanisms to generate revenues for acquiring conservation interests in wetlands. Principal among these are provisions that would extend the Wetlands Loan Act authorization for a decade and then forgive the loan under that statute, raise the migratory bird stamp fee from \$7.50 to \$15.00, and authorize imposition of entrance fees for certain national wildlife refuges. We welcome and support these proposals. Yet the Interior Department also is now asking Congress not to appropriate funds for acquisition of wetlands under either the Wetlands Loan Act or the more significant Land and Water

Conservation Fund. The bottom line is an empty cash box for wetlands, high sounding words notwithstanding.

The POWDR bill also would pursue wetlands protection on the trail of coastal barrier islands legislation. In concept, title I of the POWDR bill would bar federal expenditures or financial assistance if either of those would lead to development of wetlands. In fact, nearly all expenditures and financial assistance that destroy wetlands are exempted from the bill. Among these are exemptions for agricultural commodity price supports, water projects, and road construction. The U.S. Fish and Wildlife Service estimates that agriculture alone accounts for 87 percent of wetlands conversion.

Mr. Watt would justify these exemptions on the grounds that no more is feasible politically and we should take what we can get. If indeed title I must be unraveled so completely to become law, then the Secretary is commanding the attention of Congress to this issue only to engage it in a fantasy of little significance. Viewed jointly with efforts by the Corps of Engineers to dismantle Section 404 of the Clean Water Act, title I of POWDR is revealed as no more than a solicitation for public support that overlays settled policies with an opposite, and unfortunate, purpose.

We welcome the alternative wetlands protection bills introduced by Mr. Chafee in the Senate and Mr. Forsythe in the House (S. 1329; H.R. 3082). In addition to the revenue

generating mechanisms for wetlands contained in the POWDR bill, S. 1329 would direct that duties on imported arms be earmarked for wetland acquisition and for each of 10 years would transfer \$75 million for wetlands acquisition from sums covered into or credited to the Land and Water Conservation Fund into the Migratory Bird Conservation Fund. Although still a modest amount of money in light of the importance and loss of wetlands, S. 1329 would significantly advance wetlands conservation and reflects its sponsor's commitment to preserving the natural heritage of our nation.

We also support S. 1329's mandate for better assessment of the extent and causes of the loss of wetlands and for identification of solutions to the problem. A well documented assessment of these issues could provide the basis for eliminating the subsidies encouraging wetlands conversion that have been exempted for title I of the POWDR bill. However, we believe that Federal agencies providing wetland-destroying subsidies should not be let off the hook entirely pending such study. If it is not possible now to eliminate federal subsidies that encourage wetlands destruction, at least agencies providing those subsidies should be required to evaluate the destructive effects of what they are doing and to minimize those effects.

The attached draft legislation would strengthen S. 1329 by adding a new title on minimizing federally subsidized conversion of wetlands. This title would codify in statute the central policies of Executive Order 11990 on protection of

wetlands. That executive order directs Federal agencies to "avoid undertaking, or providing assistance for" wetland development unless no "practical alternative" exists and "all practicable measures to minimize harm" have been adopted (Sec. 2(a)). The new title, however, would not contain two crippling restrictions: E.O. 11990 does not apply to allocations of Federal agencies "to private parties for activities involving wetlands on non-Federal property" (Sec. 1(b)). Also, the requirements of Section 2(a) apply "only to the extent permitted by law..." In combination, these two restrictions strip E.O. 11990 of most significance.

Section 401 of the new title would establish a mechanism pursuant to which Federal agencies would be required to identify expenditures or financial assistance that encourage conversion of wetlands and to take steps to minimize the adverse impact of such expenditures or financial assistance. Beginning no later than one year after enactment of the section, a Federal agency would be authorized to make an expenditure or to provide financial assistance that encourages wetland conversion only after determining that (1) no reasonable alternative exists that will satisfy the purpose of and need for the expenditure or financial assistance and that will not encourage conversion of wetlands, (2) the agency has adopted practicable modifications or conditions that will minimize conversion, and (3) the agency has assessed the geographic location, total acreage, and nature of the

conversion of wetlands that will be encouraged by the expenditure or financial assistance. Federal agencies would not be required to consider any alternatives which would fail to fulfill the general purpose of and need for expenditures or financial assistance. Such fundamental review of the merits of these programs would be undertaken by Congress after submittal of the Fish and Wildlife Service report required under title V (current title IV). However, Federal agencies would be required to assist the Service with its report by giving it information on the impact of expenditures made or financial assistance provided. These agencies are in the best position to obtain such information because, unlike the Service, they control the purse strings to the subsidies and are in a position to request and to get basic information on wetland effects from the recipients of expenditures or financial assistance.

Section 401(d) would specifically authorize Federal agencies to transfer funds to the Fish and Wildlife Service or State agencies with jurisdiction over fish and wildlife and plants in order to carry out their obligations under this section. These Federal and State agencies represent a wealth of expertise on wetland conservation and restoration and section 401(d) is intended to facilitate use of such expertise.

Section 401(e) would require Federal agencies, beginning no later than with budget requests to Congress for fiscal year 1986, to specify the location, acreage, and nature of wetland

conversion that would be encouraged by proposed expenditures or financial assistance. Such agencies would also be required to itemize the portion of such requests that will be used to carry out the requirements of this section. This requirement would be deferred until the 1986 budget requests to give affected Federal agencies ample time to fully assimilate the other requirements of this section.

We urge the Subcommittee to consider this additional title carefully and to include the title in the bill when it is reported. We also fully support incorporation of the recommendations made by the National Wildlife Federation. Nearly one-half million acres of wetlands are lost each year. Against such a backdrop, adoption of our recommendations is the least that is responsible until a more definitive choice of policy on subsidies can be made.

Attachment

ATTACHMENT

PROPOSED NEW TITLE IV TO S. 1329
(Existing Title IV Would Become Title V)

TITLE IV. MINIMIZING FEDERALLY
SUBSIDIZED CONVERSION OF WETLANDS

SEC. 401. (a) Each Federal agency shall review its activities and shall identify any expenditures or financial assistance that may directly or indirectly encourage the conversion of wetlands.

(b) Upon identification of any such expenditures or financial assistance referred to in subsection (a) of this section, each Federal agency shall, in consultation with the Secretary, promptly determine which of such expenditures or financial assistance, if any, are likely to encourage the conversion of wetlands and to what extent.

(c) Beginning no later than one year after enactment of this section, no Federal agency shall make any expenditure or provide any financial assistance that will directly or indirectly encourage the conversion of wetlands, unless--

(1) there is no reasonable alternative that will satisfy the purpose of and need for the expenditure or financial assistance and that will not encourage conversion of wetlands;

(2) such agency has adopted all practicable modifications or conditions to the expenditure or financial assistance that will minimize conversion of wetlands, and

(3) such agency has assessed the geographic location, total acreage, and nature of the conversion of wetlands encouraged by the expenditure or financial assistance and has reported such assessment to the Secretary.

(d) All Federal agencies are authorized to use such portion of funds appropriated to them for expenditures or financial assistance as are necessary to carry out the requirements of this section and are authorized to transfer such funds for this purpose to the Secretary or to State agencies with jurisdiction over affected fish, wildlife, or plant resources.

(e) Beginning no later than budget requests to Congress for fiscal year 1986, each Federal agency whose expenditures or financial assistance directly or indirectly encourage the conversion of wetlands shall specify in such budget requests the geographic location, total acreage and nature of conversion and shall itemize the portion of such requests that will be used to carry out the requirements of this section.

COMMENTS OF PETER RHOADES MOTT, PRESIDENT, FLORIDA AUDUBON SOCIETY
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS HEARING
July 12, 1983

Mr. Chairman and Members of the Committee:

My name is Peter Mott. I am President of the Florida Audubon Society. The organization has about 35,000 members in the state who make up 48 chapters located from Pensacola to Key West. I also represent the St. John's River Coalition, an affiliation of sportsmen, conservationists and civic clubs dedicated to bringing about the restoration of the St. John's River.

I want to thank you and Secretary Watt for bringing us together to discuss this legislation which offers hope of solving one of the most important problems in the state of Florida today.

Consideration of S 978 and S 1329 come at an auspicious time for the state of Florida. Just as with the Barrier Island legislation, these bills, if passed, will accomplish protection for all of the citizens of the state and for that matter, almost all of the citizens of this country and half the rest of the Western World who either want to move to Florida or come to visit and enjoy our wonderful climate and beautiful natural environment. This protection, like the Barrier Island protection may save another goose which laid the golden egg about to be lost at the local level.

Florida may be also be foremost in the nation in need of this protection. The loss of wetlands has been huge and continues at an alarming pace. When Florida became a state in 1845 nearly a quarter of the state was described as "swamp or overflowed lands". Ten million acres of wetlands remained undisturbed until 1881 when the state, in desperation, sold four million acres to Hamilton Disston for 25¢ an acre. The terms of the sale required Mr. Disston to drain the land and make it usable.

Dillston's ambitions were echoed by Napoleon Bonaparte Broward, candidate for Governor of Florida in 1904 who wrote, "It would be a commentary on the intelligence and energy of the state of Florida to confess that a simple engineering feat as the drainage of a body of land 21 feet above the sea was above their power". The state's stipulations to Dillston and Governor Broward reveal an American mind set which survives to this day.

All across the state, wetlands have been ditched, drained and filled in. Typical of the state is the St. John's River Basin. Here, nearly 300,000 acres of the floodplain have been lost, 240 miles of canals have been dug to drain the area and 200 million gallons of fresh water are diverted to the ocean each day. Nearly 90% of the wetlands in the upper St. Johns are gone. Where the marsh was once 13 miles wide, it is now only 1 mile wide. It is no surprise that the Dusky Seaside Sparrow is about to become the first American bird to become extinct while under the protection of the Endangered Species Act. It could not tolerate the pollution and destruction of wetlands in its range in the St. John's Basin.

The rate of destruction of wetlands in the state of Florida has decreased markedly in recent years. Some protection has developed in the state, but the loss continues. The state's regulatory agencies and the five Water Management Districts recognize the critical need for abundant healthy wetlands to soak up flood waters, to cleanse runoff and to serve as nursery for fresh and saltwater fish. Those agencies and many of the people in the state recognize that if Florida is to enter the next century, retaining its climate, its water and its fisheries resources and wildlife, famous around the world, more of the state's wetlands must be saved.

Regulation has made wholesale destruction of wetlands more difficult. In the long run, however, in fairness to those who have in good faith bought wetland, the only solution is through purchase by the state or federal government, or other financial compensation. Unfortunately for the state, its residents and its visitors tell the legislators they are not enthusiastic about raising funds for the purchase of wetlands through ad valorem taxes. The Governor succeeded in developing a Bond Issue Program for the purchase of essential wetlands, but the need for purchase is substantially greater than can be met with the money available.

We believe that S 978 and S 1329 and tax accommodations to follow will accomplish three important steps toward the goal of protecting as much of this vital resource as possible: 1) Funds for the purchase of wetlands will be made available from appropriate federal sources, 2) the likelihood of wetland destruction will be reduced by the elimination of federal support for activities contributing to the destruction and, 3) a vehicle to provide tax advantages for banking wetlands will encourage owners to hold on to them. We urge the Committee to move the bills forward.

Looking at the particulars of the legislation some comments come to mind: we agree with Senator Chafee's concern over the number and type of exceptions listed in Section 106 of the Secretary's bill. While all of the listed exceptions require further discussion, clarification and debate, we are particularly troubled by exceptions #1 and #5. Federal approval of, or support of mineral mining in Florida wetlands is unacceptable as has been demonstrated in the state's vigorous opposition to the mining of wetlands in Osceola National Forest. I trust this section will be amended.

The justification for the special treatment given to silviculture in 106.5 is not clear and we object to it.

We express our approval of the proposed requirement of the Duck Stamp or Special Permit for entry into designated units of the National Wildlife Refuge system. For years, many non-consumptive users have sought a way to help support the Refuge System. A special permit, valid for a year, should be considered. We urge enactment of Senator Chafee's proposed lifetime permit for citizens over 62 years of age to be issued free of charge.

One of the major uses of the Refuges ought to be in the education of our children about wetlands and their values. With that in mind we urge that the permit system be modified to allow for school, college and club groups of students and children to use the refuges at no cost. The income added by these new fees will help, but the need to purchase wetlands is immense. We urge approval of the Chafee alternative using funds from the Land and Water Conservation Fund to aid the states in their effort to acquire critical pieces of wetland as delineated in Title III of his bill.

Title II of Secretary Watt's bill outlines a substitution of a new Section 7 into the Land and Water Conservation Fund Act. I sense from the language that the need of each state and each state's level of commitment to wetland conservation will influence the determination of the state's share of funds. Careful attention must be given to see that this section passes every test of need and fairness. In a state like Florida where more than 90% of the drinking water comes from ground water, purified in most cases by wetlands and where a far greater portion of the state is wetland, it would not be just to limit the Federal contribution to a share determined by the purchase of Duck Stamps. Duck hunting is not equally good in all states and bears little relation to the need for wetland preservation. I believe Senator Chafee's bill addresses the issue more fairly in Section 301.

Section 104 of Secretary Watt's bill allows for voluntary election of parcels into the system. This is a fine alternative which course of action should be encouraged by the granting of the tax incentives proposed in the Chafee Bill. Any owner who elects to put his land in the system, whether the land has been designated by the POWDR System or not, should be offered tax incentives if he prefers not to sell the land. We must use every device possible to preserve as much of this precious land as possible as soon as possible.

Finally, we urge that the mapping and designation process, modelled after the Barrier Island Program, be advanced to the earliest possible date and accelerated to the fastest possible pace. Even those of us who were angered by the deviousness of certain barrier island landowners in trying to avoid the consequences of the law, were impressed by the ingenuity of the rascals. The sooner the task is accomplished, the better.

Thank you.

STATEMENT OF JACK H. BERRYMAN FOR INTERNATIONAL ASSOCIATION OF FISH
AND WILDLIFE AGENCIES TO SENATE ENVIRONMENTAL POLLUTION SUBCOMMITTEE
CONCERNING LEGISLATIVE PROPOSALS FOR WETLANDS ACQUISITION AND
PRESERVATION.

July 12, 1983

Mr. Chairman, I am Executive Vice President of the International Association of Fish and Wildlife Agencies. I am also a member of Secretary Watt's POWDER Task Force.

Speaking for IAFWA member agencies throughout the country, I appreciate the opportunity you are affording me to comment on the legislation before you and your subcommittee colleagues today.

It is not over-stating the case, Mr. Chairman, to say that the problem of disappearing wetlands which you now seek to resolve has been the subject of greater and more prolonged concern to our organization than almost any other single issue with which we have had to cope in pursuit of our resource conservation and management objectives.

We have recognized the clear and continuing threat which the steady erosion of these resources has posed for the long-range health and viability of not only the Nation's migratory bird population but also of a wide range of fisheries and other wildlife species depending on wetlands for their breeding ground and habitat.

We have, as a consequence, fully and consistently supported those measures which seemed to us to have some realistic prospect of at least slowing the rate of wetlands loss. It was in that context that we welcomed the opportunity to become actively involved in the POWDER Task Force initiative launched last summer by Secretary Watt. In our judgment, the Secretary performed a notable service by marshalling the combined talents of business, industry, conservation interests and government and using them to spotlight in a new forum the nature and scope of the wetlands erosion situation and to suggest some possible remedies.

While the Association may not agree with all the provisions of the bill that was born of the POWDER initiative, we nonetheless regard it as a significant starting point for examination of the issue you are now undertaking. The effort is an important step in the search for an ultimate solution to this very serious problem.

The same can also be said, however, Mr. Chairman, for the proposals which you have developed or now may be considering as alternative approaches. It now remains to put together the best features of those proposals and others which may emerge from these discussions to insure the level of financing and the degree of controls necessary for a successful and continuing wetlands acquisition and preservation program. It is to that objective that my further comments will be directed.

My remarks will reflect, in combination, the product of an assessment of the issues involved by the IAFWA's Migratory Wildlife Committee, an examination of the alternatives to the POWDER proposal, and the positions taken by the Association in prior years on some of the same factors which the legislation now before you seeks to address.

I would stress at the outset our full agreement with the basic concept and objectives of those measures---the identification of major wetlands problem areas and primary causes and effects of resource losses, together with a commitment of financial resources to halt, and eventually reverse, that downward slide. Any questions we may have relate to the specifics of some of the provisions in one or both bills, rather than to their primary purposes.

Heading the list of items with which we fully concur is the provision for extension of the Wetlands Loan Act authorization for an additional 10 years. In our judgment that is essential to success of any effort to achieve a major part of the wetlands acquisition goal of 1.9 million acres established by the Fish and Wildlife Service in 1977 for the ensuing decade. After six years less than 400,000 additional acres have been secured. To make the extension most effective, however, will require a forgiveness of the initial \$200 million loan, of which \$147 million has already been spent. We urge adoption of that provision.

In the matter of new funding for additional wetlands acquisition, we consider the specific provision of S 1329 for a \$75 million annual appropriation from the Land and Water Conservation Fund for state and federal acquisition efforts realistic and necessary to address the problem. However, we disagree with the way in which both S978 and S1329 propose to allocate funds to the states for that acquisition. Pegging the allotment to revenue realized from a state's sale of duck stamps as is proposed under the POWDR bill will bar participation of all states not using that type of wildlife permit, regardless of the benefits to which they would otherwise be entitled. And considering the fact that only 24 states now sell stamps of this type, and with only two others now in the process of authorizing them, the results of the restriction would be not only to limit the program operation but make it inequitable as well.

The formula used in S1329 allocates money to the individual states on the basis of the amount of non-federal funds obligated by each state to wetlands acquisition during the most recent fiscal year. Wetland acquisition programs in some states may be nonexistent due to political pressures to leave land on the tax rolls in private ownership or due to a lack of state funds. Yet the need for wetland acquisitions may be great in these states. Our concern is that this formula for allocation of funds will preclude programs in some states having a vital need to protect wetlands. Our Association prefers a formula which recognizes both national and state priorities and which would permit the use of any wildlife resource-related funds as a state's matching share. We therefore urge adoption of a provision which would permit use of other wildlife resource-related funds as a state's matching share where appropriate.

Another area in which we prefer the S1329 approach is in the matter of an increase in the federal duck stamp price. In our judgment an increase in the annual fee from the present \$7.50 to \$15 in three stages over the next five years will have far less impact on duck stamp sales than an immediate doubling of the price and will in the long run produce more gross revenue than would result from the more precipitate action.

One program provision which we feel should be amended is that relating to the method for identification of eligible wetlands areas and we believe that quality of the resource should be taken into account as a selection criteria. The five-acre minimum provided under S978 is inappropriate for some categories because 75 percent of the individual breeding areas in the prairie pothole region are less than five acres in size and would therefore be ineligible for acquisition if that standard is retained.

In another respect--that relating to measures for dealing with the causes of wetlands loss--we find both S1329 and POWDR bill cause for concern. The POWDR proposal addresses the issue by proposing curbs on federal assistance for a number of activities contributing to wetlands loss or degradation but exempts some that have been identified as having the greatest impact. S1329, on the other hand, proposes only that the Secretary of Interior undertake a study and report to Congress two years from now on the wetlands loss situation, the nature of federal subsidies that are contributing to it and suggesting alternatives for coping with that situation. There is a substantial question of whether we can afford that additional delay, given the present rate of disappearance. We would urge that the study be speeded up and that some more immediate and definitive action be considered as a part of the further discussion of this legislation--perhaps through increased utilization of related legislation already on the books such as Section 404 of the Clean Water Act, the Fish and Wildlife Coordination Act and other related measures with a potential for enhancing wetlands protection and preservation.

Our Association is also concerned that a federal national wetlands system as proposed by POWDR will do little toward resolving conflicts between agricultural interests and conservation efforts in the prairie states. A movement to simply declare privately-owned wetlands a part of a "Federal System" will cause increased animosity among landowners there.

We strongly endorse the S1329 requirement that the U.S. Fish and Wildlife Service complete the wetlands inventory mapping as rapidly as possible.

We suggest that there may well be untapped possibilities for use of economic incentives in lieu of subsidies as a way of involving private land owners in the wetlands acquisition and preservation movement. One that comes immediately to mind is a proposal introduced last year by Senator Malcolm Wallop for use of tax exemptions to stimulate the sale or contribution of land for wildlife resources purposes and, I understand, due for re-introduction in some form quite soon. There are undoubtedly other potentials for use of federal and/or state initiatives as economic incentives and we would hope they can be explored to the appropriate degree in that frame of reference as part of your deliberations.

In such an undertaking, Mr. Chairman, you and your colleagues will be adding yet another dimension to what we venture to suggest could well prove to be one of the most challenging, and at the same time most significant and rewarding, tasks of this legislative year.

Knowing the importance of the stakes involved for not only our own members but others in the conservation and management community as well as for the future of the resources to which we are committed, we are greatly encouraged by the commitment you have made to this wetlands mission and we look forward with anticipation to contributing in any way open to us to the prospects for its success.

Meanwhile, your attention to our views is much appreciated.

Wildlife Management Institute

Dedicated to Wildlife Since 1911
Suite 725, 1101 14th Street, N.W.
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202/371-1808

Statement of Lonnie L. Williamson
before the
Subcommittee on Environmental Pollution
Committee on Environment and Public Works
on
Wetlands Conservation (S. 978 and S. 1329)

July 12, 1983

Mr. Chairman:

I am Lonnie L. Williamson, secretary of the Wildlife Management Institute. Established in 1911, the Institute's program is designed to promote restoration and improved management of wildlife and related natural resources.

We believe the current opportunity to protect the nation's important wetlands is the best in recent times because this subcommittee, the House Subcommittee on Fisheries and Wildlife Conservation and the Environment and the Interior Secretary are leading the way. It is a highly commendable effort. We are grateful to you all.

It is common knowledge that wetland maintenance is important for many reasons, including wildlife. The case is well-documented in previous Congressional hearings and in a variety of published articles and scientific literature.

We have studied the wetland measures before the subcommittee. Both have sections that would improve wetland conservation. Thus, rather than speak to specific bills, I will confine my remarks to those major provisions that the Institute would like to see approved by the subcommittee.

The Institute supports transfer of \$75 million each year for 10 years from the Land and Water Conservation Fund into the Migratory Bird Conservation Fund. We also favor using up to \$50 million of that annual transfer for paying

75 percent of the cost of federally approved state wetland acquisitions.

We endorse extension of the Wetlands Loan Act for 10 years. And we also recommend that the loan repayment requirement in that Act be deleted.

Language requiring an entrance fee into national wildlife refuges where such a program would be feasible and profitable is a good idea in our view. The receipts would be deposited in the Migratory Bird Conservation Fund and used for wetland acquisition. And those visitors possessing a valid federal Duck Stamp or Golden Eagle Passport would be exempt from the fee. This strategy appears to be a practical way of giving wildlife users other than hunters an opportunity to support wetland conservation programs.

The Institute favors increasing the federal Duck Stamp price and suggests that the graduated approach would be more publicly acceptable. We also support redirecting import duties on foreign-made arms and ammunition into the MECF for wetland acquisition purposes.

The wetland inventory and periodic trend reports are necessary in order to define wetland acquisition needs. They should be conducted and completed on a firm schedule. We also believe that directives requiring the Interior Secretary to study and identify federal causes of wetland destruction are important. We are hopeful that this provision will lead eventually to less federal subsidy of wetland loss.

Finally, Mr. Chairman, we prefer to see wetlands defined by Congress in this legislation rather than later in regulations. A regulatory definition may be too long in the process and inadequate when finalized.

Again, we appreciate the interest which this subcommittee and the Interior Department have shown in wetland conservation. We urge the subcommittee to continue its diligent efforts to devise a practical, workable program to maintain our valuable wetland resources.

Thank you for the opportunity to express our views on this important legislation.

The Nature Conservancy

1800 North Kent Street, Arlington, Virginia 22209
(703) 841-5300

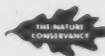
STATEMENT OF MICHAEL DENNIS, GENERAL COUNSEL, THE NATURE CONSERVANCY,
BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

JULY 12, 1983

Mr. Chairman, members of the Committee. I would like to express The Nature Conservancy's gratitude for the opportunity to submit our views for the public record on the subject of wetlands legislation now before the Senate.

The Nature Conservancy welcomes the efforts of Secretary Watt in legislation introduced by Senator Chafee (S. 978) and endorses the efforts of Senator Chafee in S. 1284 and Senators Chafee and Stafford in S. 1329. The Nature Conservancy is a non-profit conservation organization currently undertaking, with the help of scientists in the field of aquatic preservation, the most extensive work by the private sector in wetlands preservation in the nation--the five-year National Wetlands Conservation Project. This project was begun early this year with the help of a \$25 million matching grant from the Richard King Mellon Foundation. As William D. Blair, Jr., President of The Nature Conservancy, stated in the May/June 1983 issue of The Nature Conservancy News, the Conservancy welcomes the opportunity to cooperate with the federal government in this project toward the goal of effective wetlands protection across the nation.

"The project will protect outstanding examples of our increasingly threatened aquatic and wetland ecosystems, from the Atlantic coast to vital watersheds in Hawaii. In doing so, we will ensure not only their continued productivity as natural water-management systems, but also their value as habitat for diverse communities of plants



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and animals A second major objective of the project will be one of cooperative effort. For many years, the federal government has been the primary source of funds for wetlands conservation. Today the federal role is much reduced, and the task of preserving aquatic systems is too urgent and too large for either the public or private sector to undertake alone. Clearly, the job will be accomplished only if all parties--government at all levels as well as private citizens and institutions--increase their efforts. Wherever possible in this new program, and in a variety of ways, we will seek to involve others as partners and to bring to bear the resources of both the public and private sectors."

For these reasons, The Nature Conservancy applauds the legislative proposals now before the Senate.

Specifically, the Conservancy feels that the following items should be covered by the final wetlands bill:

I. Extend the Wetlands Loan Act of 1961 for ten years to September 30, 1993, and delete the Loan Act repayment requirement.

II. Make available additional financial assistance for wetlands protection by requiring:

1. Transfer, for at least a 10-year period, of \$75 million per year from the Land and Water Conservation Fund to the Migratory Bird Fund.
2. Use of up to \$50 million per year on a three-to-one matching basis to assist states to protect their wetlands. These funds should be available for data collection, project-site selection, project design and planning, and wetlands acquisition, including partial interests therein.
3. Provision of a minimum of \$25 million per year for the Migratory Bird Fund.

- III. Creation of additional funds for wetlands programs through new sources such as an increase in the duck stamp fees to \$15.00, new refuge entry fees, and payment of duties on imported sporting arms and ammunition to the Migratory Bird Fund.
- IV. Provision for the acceleration of the Department of Interior's wetlands inventory and trend analysis with special emphasis on requiring the Secretary to study and report, by September 1985, on wetlands losses in the United States, identifying federal subsidies that stimulate losses and setting forth alternatives that would minimize wetlands losses.

In addition, I wish to emphasize that the Conservancy considers the definition of wetlands in Senator Chafee's S. 1329 to be the proper one for inclusion in a final bill, if amended to expand the definition of wetlands to include associated important aquatic systems. This broader definition would serve the critical need in wetlands preservation for identification and protection of those aquatic systems which are relatively endangered and/or contain significant remnant examples of endemic species.

To elaborate, we urge that the definition be made broad enough to encompass the full diversity of water-related ecosystems in the United States. There is some danger that too narrow a definition will restrict the program to vegetated shallow water systems (those generally referred to as marshes and swamps) and exclude important ecological, fishery, and wildlife resources associated with running streams, the open and deep water parts of lakes, desert and other springs, and so on. Some of the regional ecosystems

falling into these categories are among the most threatened in the United States, along with their unique wildlife and other attributes.

The Fish and Wildlife Service's own "Classification of Wetlands and Deepwater Habitats of the United States", which is currently coming into wide use, not only in this country but internationally as well, makes it clear that the outstanding scientists who developed or were consulted on the development of this classification system could not draw strict lines in the continuum of open water, vegetated shallows, riparian zones and immediate uplands which compose our nation's water-related ecological estate. We urge that your Committee adopt a similarly broad characterization of marine, estuarine, riverine, lacustrine, and palustrine, as taken in this carefully developed federal report. We recommend that this report be cited directly in the Committee Report on the bill and will be happy to provide the Committee with a copy for that purpose.

In our judgment, making the definition of wetlands in the final bill adequately encompassing will help to avoid awkward interpretations and unintended exclusions of important resources from conservation under the resultant program. We feel such a simple and natural focus on our aquatic ecological resources will be widely supported by conservationists.

The Nature Conservancy has been working with Secretary Watt's POWDR Task Force and interested members of Congress to identify certain new federal tax initiatives that would supplement the protection efforts proposed under the above-referenced bills. The new tax initiatives that the Conservancy has suggested are as follows:

- I. Increase the charitable tax deduction limitation from 30 percent to 50 percent for land gifts that are made for conservation purposes, such as wetland protection.
- II. Increase the capital gain deduction from 60 percent to 70 percent for conservation land sales.
- III. Allow a taxpayer to defer payment of taxes on sales of conservation lands, such as wetlands, if the sales proceeds are reinvested within a two- to three-year period.
- IV. Allow an estate to satisfy its estate tax liability to the federal government by donating the full fee title interest or a partial title interest such as a conservation easement in conservation lands in lieu of state taxes.
- V. Allow the donor's estate to take any unused portion of a lifetime charitable contribution as an estate tax deduction.

This is not meant to be an all-inclusive list of tax ideas. There have been suggestions that the Tax Code be amended to remove some of the current tax incentives that encourage the destruction of wetlands, such as accelerated depreciation and tax credits that now exist. We are also exploring means of simplifying the current Tax Code provisions that allow a donor to donate the surface land but retain the subsurface minerals and access thereto. These tax initiatives should be explored with the cooperation of the Senate Finance Committee members because of their expertise and experience in this area.

Mr. Chairman, again I wish to thank you for the opportunity to submit this statement and hope it will assist the Committee in developing final wetlands legislation.



STATEMENT
of the
National Association of Conservation Districts
on
Wetland Protection
before the
Subcommittee on Environmental Pollution
Senate Committee on Environment and Public Works
July 12, 1983

Mr. Chairman, members of the Committee:

I am Neil Sampson, Executive Vice President, National Association of Conservation Districts. Our association represents the 2930 conservation districts and their state associations in all 50 states, Puerto Rico, the Virgin Islands and the District of Columbia. Conservation districts provide assistance to over 2 1/2 million cooperating landowners.

Conservation districts have been concerned about the condition of the nation's wetlands for many years. Our policies, developed by our national council with representation from all states, has a strong statement in support of the value of wetlands, as follows:

- 1) Conservation districts recognize the ecological values of wetlands and the purposes they serve. The National Inventory of Wetlands by the Fish and Wildlife Service is an important first step in identifying this resource.
- 2) We support the Water Bank Program and the principles it represents. Wetlands can remain in private ownership with public benefits through public expenditures.
- 3) We support programs to protect coastal marshes and estuaries, where 65% of all U.S. commercial finfish and shellfish, most marine sport fish, and a high preponderance of migratory birds live. We support appropriate restrictions on dredging and filling operations that would destroy these unique, highly productive areas.

Many conservation districts have assisted private landowners in the actual development of additional wetlands on their properties. This has been done on private lands with private funds because of the commitment to improving habitat values by the landowners. Additionally, farm ponds and reservoirs built for other purposes have increased some wetland values.

National Association of Conservation Districts
1025 Vermont Ave., N.W., Washington, DC 20005
(202) 347-5995

Of the bills being considered at this hearing, this association supports the passage of S-1329, the Emergency Wetlands Resources Act of 1983. We do not support passage of S-978, especially Title I of the bill.

Section 201 of S-1329 authorizes charging of admission fees to units of the National Wildlife Refuge System. Although we support this provision, we would encourage the Secretary to keep the fees at a minimum so as not to discourage visitors.

Paragraph (g) of Section 201 appears to authorize charging a fee for a special permit to inholders in the refuge system. This paragraph, in our opinion, should be amended and clarified to be certain that private owners of land within the refuge system have free access to their lands.

We support the transfer from the Land and Water Conservation Fund to the Migratory Bird Conservation Fund as outlined in Section 204.

We support Title III, Financial Assistance to States for Wetlands Acquisition.

We encourage the passage of the provisions dealing with the expeditious development of the Wetland Inventory in Title IV. We would, however, recommend an amendment to Section 402 of the bill, as follows:

Section 402(a) The Secretary, in consultation with the Secretary of Agriculture, shall.... We recommend this amendment because of the potential impacts on agricultural lands of such a study.

We would further recommend that the report called for by Section 402 include an estimate of the acres of wetlands created by the activities of landowners and others.

The list of projects and activities to be analyzed for this report seems strangely lacking in activities funded by the Department of the Interior. We suggest that some introspection may be in order, especially as it relates to projects funded by the Land and Water Conservation Fund. Boat ramps and attendant parking areas have been known to be detrimental to wetlands.

The report should also address a matter of increasing concern in the arid and semi-arid west which we brought to the attention of Interior and Agriculture back in 1978 and which has yet to be resolved. About the only wetlands in this region are those created or induced by irrigation canal seepage or from excess irrigation return flows. However, as we have worked with landowners to reduce seepage from canals and reduce the amounts of irrigation water applied to the land, the net effect has been damaging to wetlands. The trade-off between water conservation and wetland preservation is one which must be more clearly addressed as the need for water conservation grows more keen in the future.

With these proposed changes, we support the passage of S-1329.

In our opinion, Title I of S.978 is inappropriate at this time. The study of the causes of wetland loss called for in Title IV of S.1329 should be completed prior to the consideration of a proposal such as this bill.

We are especially concerned about Title I of S.978 as it relates to technical assistance and financial assistance on farmland where the crops raised are wetland dependant, such as rice, catfish, and cranberries. These agricultural enterprises are legitimate farming enterprises and should not be precluded from federal financial and technical assistance.

We are not asking for technical assistance for conversion of wetlands to cropland, only for assistance on existing cropland acres. I am sure you are aware that the agricultural appropriations acts for the last several years have precluded financial and technical assistance on all types of wetlands except Types I and II.

For these reasons, we recommend passage of S.1329 and the completion of the study called for in Section IV of the bill.

Thank you for the opportunity to present the views of this association.

TESTIMONY OF CONGRESSMAN C. W. BILL YOUNG
BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

July 12, 1983

Mr. Chairman, Thank you for the opportunity to speak in behalf of legislation which addresses the problems associated with the conservation of our nation's wetlands. Not only have the administration and members of Congress expressed their concerns for the well-being of our wetland resources, but also the American public -- almost 70 percent of those polled by Lou Harris -- favor stricter standards for preserving our wetlands.

A study recently completed by the U.S. Fish and Wildlife Service entitled "Statistical Analysis of Wetland Gains and Losses over the Last 20 Years in the Conterminous United States" found that there has been an average annual net wetland loss of 380,000 acres for the 20 year period 1954-1974. These losses equate to significant reductions in timber resources, wildlife habitat, flood production, ground water recharge, and recreational opportunities.

I am fortunate to represent in the U.S. House of Representatives Pinellas County, Florida, whose residents are particularly aware and concerned about water issues. Moreover, Pinellas County is the headquarters of the U.S. Fish and Wildlife Service's National Wetlands Inventory Program, which has already mapped about 30 percent of the

continental United States. The information gained from this work will be of great help to us in managing our wetlands. For this reason, I am particularly pleased that the committee is considering recommending to the U.S. Fish and Wildlife Service that priority be given to the mapping program and to providing periodic updates of our wetlands and deepwater habitats.

Accurate information is the basis of good wetland policy and programs. This data also will help to monitor the efficiency of our policies and to establish the parameters of federal involvement. The need to protect our wetlands has never been greater; I am pleased that you and the committee are proceeding with this review, and I look forward to working with you and my colleagues in the House in developing and expanding our nation's wetlands and wetlands inventory program.

American Farm Bureau Federation



WASHINGTON OFFICE
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 WASHINGTON, D.C. 20024
 AREA CODE 202 - 484-2222

July 13, 1983

Honorable John H. Chafee
 Chairman
 Environmental Pollution Subcommittee of the
 Senate Environment and Public Works Committee
 SD410 Dirksen Senate Office Building
 Washington, DC 20510

Dear Mr. Chairman:

We are submitting the attached statement on behalf of the American Farm Bureau Federation regarding S. 978, the Protect Our Wetlands and Duck Resources Act of 1983.

We appreciate the opportunity to present our views and request that our statement be made a part of the hearing record.

Respectfully,

John C. Datt
 Secretary and Director
 Washington Office

lh
 Attachment
 cc: Subcommittee Members

26-195 215

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
TO THE ENVIRONMENT POLLUTION SUBCOMMITTEE OF THE
SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
REGARDING S. 978, PROTECT OUR WETLANDS AND
DUCK RESOURCES ACT OF 1983

July 12, 1983

Farm Bureau would like to comment on S.978, the "Protect Our Wetlands and Duck Resources Act of 1983," which is before this Subcommittee.

The American Farm Bureau Federation is the nation's largest general farm organization with a membership of over 3 million member families in 48 states and Puerto Rico. Policies of the American Farm Bureau Federation are determined annually after being studied, debated, and approved by Farm Bureau members.

Farm Bureau members could be seriously affected by the passage of S. 978. Although the legislation appears harmless, it has the potential of adversely affecting the wetland interests of many farmers and ranchers. Farm Bureau believes there are several basic problems with S. 978. These problems are:

(1) Sections of S.978 contain vague and ambiguous language. Title I, Section 102 (1) uses the term "undeveloped" as part of the criteria for land to be placed into the "system" (the Protect Our Wetlands and Duck Resources System). S. 978 does not define what undeveloped means. For agricultural purposes, Farm Bureau believes a proper definition of "undeveloped" would be:

"All wetlands that are NOT currently surrounded by, adjacent to, or engaged in normal silviculture, agricultural, and ranching activities."

Within Title I, Section 106(5), the phrase "minor drainage" is used. This phrase is also ambiguous. Unless it is further defined or altered it has the potential to pose a serious threat to farming and ranching activities.

(2) The vagueness and ambiguity of the language within S. 978 could place the burden of interpretation on the courts. This could further exhaust already overextended federal outlays.

(3) Farm Bureau is opposed to further governmental acquisition of wetland through the extension of the "Wetlands Loan Act" of Title III or through the state acquisition process proposed in Title II of S. 978. We urge that Title II and Title III be deleted from S. 978.

(4) Wetlands inducted into the system could lose their resale agricultural production value because of the use regulations associated with S. 978. Essentially, S. 978 would release the owner

of the right to use portions of this land while not releasing him of any financial burdens associated with acquisition and ownership.

(5) A question not dealt with in S. 978 is whether induction into the system would give access of the wetland to the general public. Farm Bureau would oppose such action. Farm Bureau urges that an amendment be added clarifying that induction of a wetland into the "system" is in no way to be construed as opening access of the wetland to the general public.

For these reasons Farm Bureau believes that S. 978 should not be recommended by this Subcommittee for passage.

Thank you for considering Farm Bureau's views.



National Association of Home Builders

15th and M Streets, N.W., Washington, D.C. 20005

Telex 89-2600 (202) 822-0400

Harry Pryde
1983 President

July 12, 1983

The Honorable John H. Chafee
Chairman
Subcommittee on Environmental Pollution
Committee on the Environment and Public Works
U.S. Senate
Washington, D.C. 20510

Dear Chairman Chafee:

I am submitting this statement on behalf of the 111,000 members of the National Association of Home Builders for the Subcommittee's hearing on wetlands bills on July 13. I request that this statement be made part of the hearing record. NAHB is a trade association of the nation's homebuilding industry. Portions of the bills being considered by the Subcommittee would affect the land development activities of our members.

The use of land is fundamental to the homebuilding industry, to the growth of our communities, and to the liberties that we enjoy as American citizens. Private initiative is the driving force in the development of land. Developers help meet our needs for housing, places to work and to shop, recreation and many other activities. We are proud of the imagination and industry the private sector has shown in building America. Government has a role in setting rules for the use of land. Defining the government's role is difficult.

NAHB adopted a Land Use Policy Statement in 1982, which sets out our views on the proper roles of the Federal, state and local governments in the regulation of land use. The Federal government should set broad policy objectives for land use. The state governments should coordinate local land use decisions regionally to be sure that they are in the broad public interest. Local governments should determine land uses in accordance with comprehensive land use plans that provide for the full range of community needs. Our comments on the bills are made in the context of our overall Land Use Policy Statement. It is attached as Appendix A to this statement.

You introduced by request S. 978, the "Protect Our Wetlands and Duck Resources Act of 1983," a bill authored by the Department of the Interior. Title I of that bill would authorize the establishment of a system of wetland areas and would prohibit the expenditure of certain Federal funds within that system. Basically, wetlands over 5 acres in area that are deemed significant for wildlife



Housing—Shelter for the People/Jobs for the Economy

habitat, the production of aquatic organisms, or water quality would be included in the system.

We oppose the restriction of Federal expenditures on the designated wetlands. This is an example of back door Federal land use planning. It is poor planning and an inappropriate role for the Federal government. This is a single purpose program that would override comprehensive local land use planning. The Federal government should not attempt to dictate land uses from Washington throughout the nation. It should not attempt to replace the judgment of local communities with its own judgment on local growth. We believe the local citizenry which must live with these decisions is the best judge of its own community needs.

In addition, Title I of S. 978 would prohibit development by certain types of developers, while it permits Federal assistance to those activities that are responsible for the majority of wetlands conversion. Farming, water resource projects, energy and mineral development, military activities and some highway projects could receive Federal assistance under the bill, even though they are in wetlands. The bill would not accomplish the purpose that it sets forth.

S. 978 also presents administrative problems. It does not define wetlands, so it creates uncertainty. The mapping procedure it contemplates would be extremely difficult. First, cartographers would have to draw maps to divide wetlands into those more and less than 5 acres. Second, the Secretary of the Interior would have to decide which parcels were "significant" as explained in the bill. The Administration has drawn parallels between this bill and legislation on federal expenditures on coastal barriers. However, the mapping of coastal barrier islands, spits and similar land formations is far easier than the mapping of mainland wetlands areas. We believe that the bill would create confusing and problematic mapping procedures.

The bill would expand the Federal bureaucracy unnecessarily. Already the Environmental Protection Agency, the Army Corps of Engineers, the Fish and Wildlife Service and the Office of Coastal Zone Management have some form of jurisdiction over or involvement in wetlands areas. This bill would oblige the Department of the Interior to become more fully involved by mapping and writing rules for Federal agency guidance. Those agencies in turn would have to write rules to carry out their responsibilities. This whole procedure seems to ignore the existing protections afforded wetlands areas by Federal agencies under Executive Order 11990, Protection of Wetlands. Under that Executive Order, Federal agencies are obliged to consider the impact of their actions on wetlands and avoid adverse consequences to wetlands wherever practicable. We ask the Subcommittee to reject Title I of S. 978.

You have offered a more positive approach to the Federal role in wetlands protection in S. 1329, the "Emergency Wetlands Resources Act of 1983." That bill would authorize a study of the economic and environmental impact of restrictions on Federal expenditures in wetlands. While we do not agree with the basic premise that Federal funds should be restricted in wetlands areas, we believe that accurate information is needed before any action is considered. We also agree with the continuation of the national wetlands inventory. That inventory too will give us a better picture of the extent of our wetlands resources.

We oppose new appropriations for wetlands conservation and acquisition, because of the impact on the Federal budget. Nonetheless, we would not oppose the use of existing Land and Water Conservation Fund and Migratory Bird Conservation Fund monies to provide grants to states for acquisition and conservation projects. States can work with local governments to set priorities and conserve those wetlands of greatest value. For the highest priority wetlands, the land or a conservation easement could be acquired for protection purposes. This method must fully compensate the landowner for the loss of his land or its use. It should be used only for those wetlands deemed most valuable by qualified scientists, because of its cost to the taxpayers.

States are in a position to coordinate policy regionally. States with large wetlands areas have addressed the issue. States like Florida, Louisiana, New York, Massachusetts, Maryland and others have strong, effective laws to regulate activities in wetlands. With various combinations of review boards, permits, and environmental assessments, the states are taking care of their wetland resources. They do not need to have their big Federal brother looking over their shoulders and making land use decisions that could well be inconsistent with the comprehensive approaches taken by state and local governments.

We strongly recommend that incentives be provided to induce landowners to set aside wetlands areas, while still getting a fair and reasonable return on their land. For example, state and local governments could give tax deductions to owners willing to forego the use of wetlands. Local governments could reduce property taxes on wetlands. We look forward to the bill that you have indicated you will introduce with Senator Wallop to encourage wetlands conservation through tax measures.

Local governments could authorize innovative land use tools such as density bonuses, planned unit developments and clustering techniques that permit imaginative site design. These land use techniques would be useful in developing parcels of land that are partially wetlands. When the landowner developer files a site plan with the local government, he could be granted a greater than normal allowance of dwelling units on the non-wetlands portion of his site in exchange for not developing the wetlands portion. This density bonus would not only help make the project financially feasible, but would reduce land costs per dwelling unit, a savings that could be passed on to the homebuyer.

Likewise, planned unit developments and clustered housing on smaller parcels offer the opportunity to design housing developments that complement environmentally sensitive areas. A planned unit development is a comprehensively planned land development project that permits flexibility in the siting of buildings, the mixture of house types and land uses, usable open space, and the preservation of significant natural features. A clustered housing development is a land design technique for single-family subdivisions that calls for the development of lots smaller than those specified in a majority of a community's conventional zoning districts. The density conforms to the normal zoning, but the developer is allowed to use smaller lots, zero lot lines, and attached housing. This technique allows for the inclusion of open space on smaller development parcels. In the case of both planned unit developments and clustered housing, the developer is able to use the natural drainage and flood protection value of wetlands to enhance the development.

The land use techniques that we advocate will help us provide affordable housing in a sound environment. In January of 1982 we adopted a statement of development principles with the Sierra Club. The statement is attached as Appendix B. The statement concludes with the two organizations agreeing to "encourage local governments to adopt incentives and development standards which promote more efficient land use through higher densities and through cost-effective site design for infill areas."

I urge the Subcommittee to maintain an appropriate balance between the Federal government and state and local governments. The Federal government's proper role is providing broad policy guidance. The Federal government, because of its resources, can also provide valuable information about our wetlands, pursue the acquisition of high priority wetlands, and assist states in their role of coordinating local decisions. Local governments should make land use decisions. I appreciate the opportunity to present NAHB's views on the wetlands bills before the Subcommittee.

Sincerely,

Harry Pryde

Harry Pryde
President

APPENDIX A

LAND USE AND THE ENVIRONMENTNAHB Land Use Policy Statement

5/82

The National Association of Home Builders recognizes this nation's desire for the development of its land resources in a harmonious and environmentally acceptable manner. Any land use policy must balance the basic human needs of a still expanding national population and legitimate environmental concerns. Within that framework, housing opportunities for Americans of all income levels must be enlarged and their right of mobility and freedom of choice assured. Bureaucratic regulations have now grown to monstrous proportions and threaten to deprive the American public of its right to live in affordable housing. With regulations have come regulators who often accept the philosophy that all development is unacceptable until proven otherwise by its sponsor, usually without regard to the time, expense or the user group involved.

The National Association of Home Builders urges an immediate review of all environmental and land use related laws, regulations, rules, ordinances, policies, etc. at all levels of government and that new minimal standards be adopted which reflect the following:

1. That a clear and compelling need for the regulation exists.
2. That land use and environmental policy regulations serve a reasonable need and complement national housing goals.
3. That standards be technologically feasible, cost effective and attainable.
4. That a positive cost benefit analysis has been considered.

Priorities must be set and mechanisms created at the local, state and national levels for resolving land use issues at the lowest level which will produce rational and coordinated land use. The federal role should be in the area of broad policy; the state role to assure that local land decisions are regionally coordinated within the state and in the broad public interest; and the local role to determine land use in accordance with overall need, encouraging housing for people of all incomes, races and creeds. Accordingly, any national legislation establishing broad national land use policy must be aimed toward achieving national housing goals.

To attain these goals, we urge the federal government to:

1. Establish only broad policy objectives.
2. Allow state and local governments the authority to set specific standards and implementation methods to achieve national objectives and to meet their regional housing needs.

NAHB Land Use Policy Statement (Continued)

2. Allow state and local governments the authority to set specific standards and implementation methods to achieve national objectives and to meet their regional housing needs.
3. Take affirmative steps to reduce the cost of housing through legislative reform of land use regulations.

State and Local Governments Must:

1. Improve long and short-term planning to determine the need for government services and capital facilities, and assume responsibility for timely implementation of those plans to accommodate projected needs.
2. Review existing zoning and subdivision standards to determine their relevancy to questions of health and safety; and amend and eliminate requirements that do not represent a legitimate public purpose or that unnecessarily raise land development costs and ultimately costs to the consumer.
3. Ensure that zoning designations and land use plans reflect the need to effectively utilize land, energy and other resources by encouraging higher density land use reflecting changing national needs and priorities.
4. Improve the efficiencies of local zoning and subdivision regulations through higher professional standards and better coordination of inspections.
5. Establish the option of "one stop" permit systems or procedures that encourage rapid review with master application forms, combined permit hearings, and require strict time limits on permit decisions.
6. Modify ordinances or government regulations which require large lot sizes, minimum floor areas and dwelling unit restrictions that prohibit low and moderate income housing production, especially for the first time home-buyer.
7. Provide incentives for the private sector to fulfill regional housing needs, especially for low and moderate income families.
8. Adopt policies which require the local government to supply needed capital improvements and thereby eliminate special fees and taxes that discriminate against new development.
9. Eliminate proposals or policies which would artificially restrict development needs of the community or state.

APPENDIX B



National Association of Home Builders

15th and M Streets, N.W., Washington, D.C. 20005

Telex 89-2600

(202) 822-0200

January, 1982

 JOINT SIERRA CLUB AND
 NATIONAL ASSOCIATION OF HOME BUILDERS
 STATEMENT ON CERTAIN DEVELOPMENT PRINCIPLES

America's demand for housing and the pressure on natural resources continues. To promote decent affordable housing in a sound environment, the National Association of Home Builders and the Sierra Club will encourage:

- building of needed housing as "infill" on appropriate vacant land within urban and adjacent suburban areas at densities sufficient to encourage cost-effective transit service,
- rehabilitation of older usable housing,
- compatible mixes of housing, commerce and industry,
- energy efficient building designs and water conservation measures,
- development of adequate, cost-effective transit service, and
- government acquisition with fair and equitable compensation of parks and open space.

These development patterns would conserve energy, water, land and building materials. Such patterns would improve air quality and make better use of existing urban infrastructure. Additionally, these patterns would reduce development in forest lands, agricultural lands, wetlands and other natural areas.

We urge neighborhood leaders and groups, builders and planning officials to cooperate to produce projects which respond to community needs and which respect existing neighborhoods. After assuring this cooperation, we urge state and local governments to improve permitting processes by specifying development requirements in advance, by coordinating review times when projects are proposed, and by eliminating unnecessary delays and duplicative reviews. We further encourage local governments to adopt incentives and development standards which promote more efficient land use through higher densities and through cost-effective site design for infill areas.

Western Regional Council

July 15, 1983

BOARD OF TRUSTEES

Bruce M. Blackwell
Chairman of the Board
Chairman of the Board
Colorado National Bank

Harry Blundell
Vice-Chairman of the Board
President and
Chief Executive Officer
Utah Power and Light
Company

Maxie L. Anderson
Chairman of the Board and
Chief Executive Officer
Ranchers Exploration and
Development Corporation

Richard M. Brenden
President and
Chief Executive Officer
Burlington Northern

Harry M. Conger
President
Homestake Mining Company

Ralph F. Cox
Executive Vice President
Atlantic Richfield Company

Joe L. Gremban
President
Sierra Pacific Power
Company

William A. Griffith
President and Chief
Executive Officer
Hcla Mining Company

A. H. Kinneberg
Senior Vice President
and General Manager
Phelps Dodge
Corporation

William D. Owens
President
Northwest Exploration
Company

L. Merrill Rasmussen
President and
Chief Executive Officer
Husky Oil Company

The Honorable John H. Chafee, Chairman
Senate Subcommittee on Environmental Pollution
312 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Chafee:

Your subcommittee recently held hearings on S.1329, the "Emergency Wetlands Resources Act of 1983". Although the Western Regional Council was unable to testify at this hearing, the Council would request that this letter and enclosures be made part of the hearing record on S.1329.

The Western Regional Council met with members of your staff a number of times during the Subcommittee's consideration of amendments to the Clean Water Act. The Council repeatedly stated its concerns with the Section 404 dredge and fill provisions of the CWA. The Council also filed formal testimony regarding Section 404. The Council was given the impression that it would be more appropriate to bring up its concerns with Section 404 when the Subcommittee considered wetlands legislation.

If S.1329 was a comprehensive wetlands protection act it would certainly have been appropriate to discuss Section 404. Unfortunately, S.1329 is not comprehensive. The provisions in S.1329 may indeed be necessary -- especially the wetlands inventory and trend analysis in Title IV. However, the Council is certainly not satisfied to wait until 1985 or 1986 when the study is complete before expressing its concerns with Section 404 and in seeking some kind of redress for these concerns.

Although you are aware of the WRC's concerns with Section 404, I have enclosed with this letter a complete explanation of the Council's concerns with the dredge and fill program. The Council would request that you give its views consideration. Additionally, the Council would request that you consider amending the definition of "wetland" included in Section 3(c) of S.1329 to exempt irrigated areas which would revert to upland if the irrigation ceased.

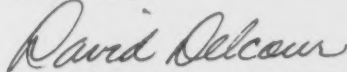
P.O. Box 8144, Salt Lake City, Utah 84108 · Telephone (801) 363-7997

It would also request that you consider providing a venue where Section 404 can be discussed. Whether the goals of the Section 404 program are clear or are laudable is really not the primary issue. The issue is that the program does not work well or efficiently; that it places an unfair burden on industry and business in the West; and that it does this without necessarily attaining the goal of protecting wetlands.

The WRC would appreciate having the opportunity to discuss its concerns further with your staff.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "David Delcour".

David Delcour, Chairman
Clean Water ad hoc
Committee

/vs

Enclosure

NAVIGABLE WATER DEFINITION

EPA's jurisdiction for regulation of water discharges under the Clean Water Act is confined to "navigable waters". The Agency, pursuant to court decisions, has defined the term "navigable waters" broadly so as to include stream beds that: (1) have water in them only occasionally as a result of rains or snowmelt; (2) do not support fish, shellfish or wildlife; (3) do not provide water to downstream users; and (4) do not flow into other streams, rivers, or lakes.

As a consequence of EPA's broad definition of the term "navigable waters", sources that discharge into such stream beds are threatened with large capital and operating expense to meet the Agency's effluent limitations regulations, even though the discharges do not harm surface waters nor adversely affect water quality in other water bodies.

Unique Features of Western Waters: The definition of navigable waters at Section 502(7) is so broad that it encompasses nearly every water course in the United States, including many normally dry arroyos in the West. Because of this broad definition, the prohibition at Section 301 of the discharge of pollutants into waters of the United States without a permit, applies to many streams which may not need this level of protection. In the arid western United States there are streams which flow intermittently as a result of rain runoff or snowmelt and when they do flow, do not empty into public bodies of water which need protection, do not support fish or wildlife and do not provide water for downstream users.

For instance, some industrial discharges are into streams which empty into desert playas which are in fact sealed basins where the water eventually evaporates. Most desert playas contain considerable naturally occurring salts and their waters are not used. Therefore, to require treatment of discharges into these playas is to require treatment for treatment's sake, since no use is made of the discharged water.

Recommendation: The definition of navigable waters (Section 502(7)) should be narrowed to exclude those bodies of water which have water in them only intermittently as a result of rain runoff or snowmelt, do not support fish, shellfish, or wildlife, do not provide water to downstream users, and do not flow into other water bodies.

NAVIGABLE WATERS AND WETLANDS

The overbroad definition of navigable waters also includes wetlands and requires that Section 404 Dredge and Fill permits not be issued unless specific steps have been taken to minimize adverse impacts on wetlands.

Impact on the West: As a result of court decisions and agency regulations, the definition of wetlands has been expanded to include "vegetation typically adapted for life in saturated soil conditions". In the West, this results in land temporarily saturated from snowmelt runoff and irrigation to fall under the jurisdiction of the Corps' 404 permit program.

In the Spring, snowmelt and subsequent runoff causes streambeds to overflow and adjacent lands to be temporarily saturated. Wetlands-type vegetation appears even though the stream may be dry at other times of the year. This results in many areas adjacent to intermittent streams in semi-arid areas being considered wetlands. Even though activity on these areas or affecting these areas do not have an adverse effect on navigation or interstate water quality, permits are required for wetlands protection.

Furthermore, it is not uncommon to find that lands in western river valleys have been or are irrigated for either farming or grazing purposes. As a result of the temporarily saturated soil conditions from irrigation, wetlands-type vegetation occurs on the borders of irrigation ditches, as well as in irrigated pasture lands. Under the present law, no permit is required for the discharge of fill material into an irrigation ditch, yet activity on the "adjacent" irrigated land may require a permit. - In Appendix B you will find an example of where irrigated pastures and lands, only inundated in the Spring as a result of snowmelt, are being required to have 404 permits.

Mining and energy development are often located in rural mountain valleys where either one or both of these temporarily saturated soil conditions exist. The impact of such development can be widespread if a major development is proposed or it can be very localized if a single building is constructed. In either case, the Corps' present practice is to require developers to apply for a 404 permit. To help mitigate the impact the Corps will either deny the permit, require costly alternatives to the project, or require costly habitat replacement. This is objectionable not only because of cost, but because it assumes all wetlands, even irrigated pastures, are of equal importance and deserve the same degree of protection. Furthermore, it allows the Corps to assert jurisdiction in areas of traditional local and State authority.

Recommendation: The definition of navigable waters (Section 502(7)) should be narrowed to eliminate artificial and/or seasonal wetlands. This can also be accomplished by exempting certain wetland areas under Section 404. These exemptions should include:

1. Lands adjacent to streams that either flow or overflow as a result of runoff waters.

2. Lands adjacent to isolated lakes, potholes, arroyos, intermittent streams and other waters that are not part of a tributary system to interstate waters or navigable waters.
3. Land areas containing wetlands-type vegetation as a result of irrigation practices.

APPENDIX A

Definitions of Some
of the Unique Features
of Western WaterPlayas

The large number of ephemeral desert lakes, pans, or playas in the West is reflective of the poorly defined drainage of the characteristically arid areas. Generally, a playa is a shallow, central basin of a desert plain in which water gathers after a rain and then evaporates. It has its own drainage basin, which is a closed system, and will not run into a main stream system. Specifically, the main types of desert-lake basins and their hydrologic significance are:

1. Tectonic Lakes. These are generally the largest and occupy the centers of depressed land areas. They tend to be the center of interior drainage systems, i.e., the area into which the adjacent land drains and has no surface outlet. Such lakes commonly date from earlier periods of heavier rainfall. Despite the rarity of surface flooding and the high evaporation losses, the water table is normally close to the surface. Such lakes are most common to the West.
2. Lakes Formed by the Poorly Defined Drainage. These lakes commonly occupy parts of former valleys which have become self-contained basins as the result of a changing climate. They may remain part of a former tributary systems, or they may be isolated from surface drainage. They are a form of barrier lake, dammed by the deposition of sediments left by the former valley or by the encroachment of windblown sands. They may be fed by surface flow or shallow groundwater from infiltration from the margins of the basins. They do not necessarily become collection points of subsurface drainage.
3. Lakes at Drainage Terminals. These are normally shallow basins of sediment deposition, at the end of or adjacent to major stream beds, fed by floodwater or by an outflowing branch of a river, i.e., a delta. They may be fresh or brackish, and are fed entirely by surface flow.
4. Lakes Formed in Uneven Surfaces of Wind Blown Deposits (sand dunes). These include shallow pans in dune swales or in hollows in a sand plain, and they may be fed by local runoff and seepage or by flooding. (The Handbook of Applied Hydrology, Ven Te Chow: Editor, 1964)

Intermittent Streams

Stream channels which carry water part of the year and are dry the other part, but which receive flow from the groundwater table when it is high enough, are called intermittent. (Streams: Their Dynamics and Morphology, Marie Morisawa, 1968).

Arroyos

An arroyo is a vertical-walled, flat-floored channel of an ephemeral stream in the semi-arid Southwest. (Dictionary of Geological Terms, American Geological Institute, 1962).

Ephemeral Streams

Ephemeral stream is a stream or a portion of a stream which flows only in direct response to precipitation. It receives little or no water from springs and no long-continued supply from melting snow or other sources. Its channel is at all times above the water table. (Dictionary of Geological Terms, American Geological Institute, 1962)

98TH CONGRESS
1ST SESSION

S. 978

To extend until October 1, 1993, the authorization for appropriations to the migratory bird conservation fund, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 5, 1983

Mr. CHAFEE (by request) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To extend until October 1, 1993, the authorization for appropriations to the migratory bird conservation fund, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Protect Our Wetlands
4 and Duck Resources Act of 1983".

5 FINDINGS AND STATEMENT OF PURPOSE

6 SEC. 2. (a) The Congress finds that—

7 (1) many wetlands play an integral role in main-
8 taining the quality of life through material contributions
9 to our national economy, food supply, water quality,
10 and fish and wildlife resources, and thus to the health,

1 safety, recreation, and economic well-being of all our
2 citizens;

3 (2) many wetlands provide essential breeding,
4 spawning, nesting, and wintering habitat for a major
5 portion of the Nation's fish and wildlife, including mi-
6 gratory birds, endangered species, commercially and
7 recreationally important finfish, shellfish, and other
8 aquatic organisms, and a variety of resident fish and
9 wildlife species;

10 (3) the use of wetlands, and the fish and wildlife
11 dependent thereon, for recreational and commercial
12 purposes provides important economic benefits, includ-
13 ing—

14 (A) contributions to a commercial marine
15 harvest valued at several billion dollars annually;

16 (B) support for a major portion of the Na-
17 tion's multimillion dollar annual fur harvest; and

18 (C) fishing, hunting, birdwatching, and other
19 wetland-related recreational activities that gener-
20 ate billions of dollars annually;

21 (4) many wetlands exert a positive effect on the
22 Nation's water quality by serving as ground water re-
23 charge areas, nutrient traps, and chemical sinks;

24 (5) many wetlands provide a natural means of
25 flood and erosion control by retaining water during pe-

1 riods of high runoff, thereby protecting against loss of
2 life and property;

3 (6) wetlands constitute only a small percentage of
4 the land area of the United States, with estimates indi-
5 cating that approximately 50 per centum of all wet-
6 lands that existed at the founding of our Nation have
7 been converted and that losses are continuing at a sig-
8 nificant rate;

9 (7) certain actions and programs of the Federal
10 Government have unnecessarily subsidized the alter-
11 ation of wetlands, thereby accelerating the loss of these
12 valuable resources and the biological and economic
13 benefits that they provide; and

14 (8) the existing Federal-State-private partnerships
15 in wetlands conservation should be strengthened in
16 order to minimize further losses of these valuable areas
17 and to assure their management in the public interest
18 for this and future generations.

19 (b) It is the purpose of this Act to promote, in concert
20 with other Federal statutes and programs, the conservation
21 of our Nation's environmentally significant wetlands in order
22 to minimize the loss of public benefits they provide by—

23 (1) establishing the Protect Our Wetlands and
24 Duck Resources System, within which certain future
25 Federal expenditures that have the effect of encourag-

1 ing the unnecessary alteration and consequent loss of
2 environmentally significant wetlands will be minimized;

3 (2) intensifying existing cooperative efforts among
4 private interests and local, State, and Federal govern-
5 ments for the management and conservation of wet-
6 lands; and

7 (3) intensifying Federal, State, local, and private
8 sector efforts to protect the Nation's most significant
9 wetlands through easement, acquisition, or other meth-
10 ods that respect rights of private ownership.

11 TITLE I—THE PROTECT OUR WETLANDS AND
12 DUCK RESOURCES SYSTEM

13 DEFINITIONS

14 SEC. 101. For purposes of this title, the term—

15 (1) "committees" means the Committee on Mer-
16 chant Marine and Fisheries of the House of Repre-
17 sentatives and the Committee on Environment and
18 Public Works of the Senate;

19 (2) "Federal expenditures" means any direct or
20 indirect Federal expenditure, including any form of
21 loan, grant, guaranty, insurance, payment, rebate, sub-
22 sidy, or any other form of direct or indirect Federal as-
23 sistance other than—

24 (A) general revenue-sharing grants made
25 under section 102 of the State and Local Fiscal

1 Assistance Amendments of 1972 (86 Stat. 919;
2 31 U.S.C. 1221);

3 (B) deposit or account insurance for custom-
4 ers of banks, savings and loan associations, credit
5 unions, or similar institutions;

6 (C) the purchase of mortgages or loans by
7 the Government National Mortgage Association,
8 the Federal National Mortgage Association, or the
9 Federal Home Loan Mortgage Corporation;

10 (D) Federal expenditures required incident to
11 the issuance of permits or other authorizations
12 under Federal law;

13 (E) assistance under programs entirely unre-
14 lated to alteration of wetlands, such as any Feder-
15 al or federally assisted public assistance program
16 or any Federal old-age, survivors, or disability in-
17 surance program;

18 (F) the commodity loans and purchases pro-
19 gram and cotton, feed grain, wheat, and rice pro-
20 duction stabilization programs administered by the
21 Department of Agriculture; and

22 (G) Federal expenditures required incident to
23 studies, evaluations, design, construction, oper-
24 ation, maintenance, or rehabilitation of Federal

1 water resource development activities, including
2 channel improvements;

3 (3) "Secretary" means the Secretary of the Inte-
4 rior; and

5 (4) "System" means the Protect Our Wetlands
6 and Duck Resources System established by section 102
7 of this Act.

8 ESTABLISHMENT OF SYSTEM

9 SEC. 102. There is established the Protect Our Wet-
10 lands and Duck Resources System, which shall be comprised
11 of areas identified by the Secretary pursuant to sections 103
12 and 104 of this Act as environmentally significant wetlands
13 in the United States five acres or more in size that—

14 (1) are undeveloped; and

15 (2) provide significant wildlife habitat, particularly
16 for migratory birds, species listed under the Endan-
17 gered Species Act of 1973 (87 Stat. 884; 16 U.S.C.
18 1531 et seq.), or other species protected by Federal
19 law or treaty; or

20 (3) contribute significantly to the production of
21 fish, shellfish, or other aquatic organisms; or

22 (4) contribute significantly to water quality.

23 The System shall not include any area that is a coastal bar-
24 rier as defined in section 3 of the Coastal Barriers Resources
25 Act (96 Stat. 1653; 16 U.S.C. 3502).

MAPPING OF SYSTEM

1
2 SEC. 103. (a) The Secretary shall publish maps that
3 identify as components of the System wetlands that satisfy
4 the criteria set forth in section 102 of this Act. Such maps
5 shall be prepared as soon as practicable after the date of the
6 enactment of this Act, but may be prepared and made final in
7 such sequence and on such basis of priority as the Secretary
8 considers appropriate. In preparing such maps, the Secretary
9 may use such information available from any Federal agency,
10 State or local government, or any private, academic, or sci-
11 entific organization as the Secretary considers appropriate.

12 (b)(1) In preparing any map of one or more components
13 of the System under this section, the Secretary shall, after
14 consultation with appropriate Federal agencies, State and
15 local officials, and private, academic, or scientific organiza-
16 tions, first propose a draft map for the components involved.

17 (2) The Secretary shall publish a notice announcing the
18 availability of such draft map in the Federal Register and
19 distribute copies of such map to appropriate Federal agen-
20 cies, the Governors of affected States, the State agencies re-
21 sponsible for fish and wildlife, and affected county govern-
22 ments. Copies of such map shall also be available for public
23 inspection in the appropriate offices of the United States Fish
24 and Wildlife Service.

1 (3) The Secretary shall provide not less than ninety days
2 for public comment on such map, during which any affected
3 State is encouraged, in consultation with the Secretary, to
4 hold public hearings to receive testimony on the application
5 of the criteria set forth in section 102 of this Act to compo-
6 nents identified in such draft map.

7 (4) After considering all of the comments received, the
8 Secretary shall issue a final map for the components involved
9 and shall publish a notice of its availability in the Federal
10 Register. The Secretary shall also—

11 (A) file such map with the committees;

12 (B) distribute copies of such map to appropriate
13 Federal agencies, the Governors of affected States, the
14 State agencies responsible for fish and wildlife, and af-
15 fected county governments; and

16 (C) make copies of such map available for public
17 inspection in the appropriate offices of the United
18 States Fish and Wildlife Service.

19 (c) Periodically, the Secretary shall conduct, in consulta-
20 tion with appropriate Federal agencies, State and local offi-
21 cials, and private, academic, or scientific organizations, a
22 review of the System to identify any areas that should be
23 added to or deleted from the System under section 102 of this
24 Act. Maps of any areas affected shall be published in accord-
25 ance with the provisions of this section.

ELECTION INTO SYSTEM

1
2 SEC. 104. (a) Any person or entity owning all right,
3 title, and interest, both surface and subsurface, in any wet-
4 land area that is not identified as a component of the System
5 by the Secretary may elect to have such wetland area identi-
6 fied as a component of the System.

7 (b) Any election under this section shall be made in
8 compliance with regulations established by the Secretary.
9 Once such an election is made and filed with the Secretary,
10 the area involved shall be identified and mapped as a compo-
11 nent of the System.

12 (c) Upon inclusion of an area in the System under this
13 section, the Secretary shall publish notice of such inclusion in
14 the Federal Register and shall file and distribute the map
15 identifying such component in the manner provided in section
16 103(b)(4) of this Act.

LIMITATIONS ON FEDERAL EXPENDITURES

17
18 SEC. 105. (a) Except as provided in section 106 of this
19 Act and notwithstanding any other provision of law, no new
20 Federal expenditures may be made under authority of any
21 Federal law for any purpose within any component of the
22 System.

23 (b) Any Federal expenditure made under authority of
24 Federal law shall, for purposes of this Act, be a new Federal

22 (3) any use or facility deemed essential to national
23 security by the Secretary of Defense or the Secretary
24 of Energy;

1 (4) the construction, operation, maintenance, and
2 rehabilitation of Coast Guard facilities and access
3 thereto;

4 (5) normal silviculture activity, such as plowing,
5 seeding, cultivating, minor drainage, or harvesting for
6 the production of fiber or forest products;

7 (6) assistance for emergency actions that are es-
8 sential to the saving of lives and the protection of
9 property and the public health and safety, including ac-
10 tions performed pursuant to sections 305 and 306 of
11 the Disaster Relief Act of 1974 (42 U.S.C. 5145 and
12 5146), section 1362 of the National Flood Insurance
13 Act of 1968 (42 U.S.C. 4103), and section 5 of the
14 Flood Control Act of 1941 (33 U.S.C. 701n), and that
15 are limited to those necessary to alleviate the emergen-
16 cy; and

17 (7) any of the following actions or projects, but
18 only if the making of expenditures therefor is consistent
19 with the purposes of this Act and is limited to—

20 (A) projects for the study, management, pro-
21 tection, and enhancement of fish and wildlife re-
22 sources and habitats, including acquisition of fish
23 and wildlife habitats and related lands, stabiliza-
24 tion projects for fish and wildlife habitats, and fish
25 and wildlife-oriented recreational projects;

1 (B) projects that will promote the conserva-
2 tion of wetlands, including payments made pursu-
3 ant to the Water Bank Act (84 Stat. 1468; 16
4 U.S.C. 1301);

5 (C) the establishment, operation, and mainte-
6 nance of air and water navigation aids and de-
7 vices, and for access thereto;

8 (D) projects under the Land and Water Con-
9 servation Fund Act of 1965 (78 Stat. 897; 16
10 U.S.C. 4601-4 et seq.) and the Coastal Zone
11 Management Act of 1972 (86 Stat. 1280; 16
12 U.S.C. 1451 et seq.); and

13 (E) scientific research, including aeronautical,
14 atmospheric, space, geologic, marine, fish and
15 wildlife, and other research development, and ap-
16 plications.

17 CERTIFICATION OF COMPLIANCE

18 SEC. 107. Each Federal agency affected by this Act
19 shall make written certification that such agency has com-
20 plied with the provisions of this Act during each fiscal year,
21 beginning with the first fiscal year in which a map of a com-
22 ponent of the System is made final under section 103(b)(4) of
23 this Act. Such certification shall be submitted on an annual
24 basis to the committees pursuant to the schedule required

1 under the Congressional Budget and Impoundment Control
2 Act of 1974.

3 TITLE II—FINANCIAL ASSISTANCE TO STATES
4 FOR WETLANDS CONSERVATION

5 USE OF LAND AND WATER CONSERVATION FUND FOR
6 WETLANDS CONSERVATION

7 SEC. 201. The Land and Water Conservation Fund Act
8 of 1965 (78 Stat. 897; 16 U.S.C. 4601-4 et seq.) is amended
9 by redesignating sections 7 through 12 thereof as sections 8
10 through 13, by redesignating all references to such sections
11 accordingly, and by inserting after section 6 thereof the fol-
12 lowing new section:

13 "FINANCIAL ASSISTANCE TO STATES FOR WETLANDS
14 CONSERVATION

15 "SEC. 7. (a) In order to encourage the conservation of
16 the Nation's wetland resources, the Secretary is authorized,
17 commencing with the first fiscal year beginning after the date
18 of the enactment of this section, to provide annually, for not
19 more than ten fiscal years, financial assistance from the fund
20 to the States for purposes of wetlands conservation, as de-
21 fined in subsection (c)(3) of this section. Payments for such
22 purposes may be made to the States as hereinafter provided,
23 subject to such terms and conditions as the Secretary consid-
24 ers appropriate and in the public interest.

1 “(b) Sums appropriated and available from the funds for
2 wetlands conservation under this Act shall be apportioned
3 among the States by the Secretary, whose determination
4 shall be final, on the basis of each State’s proportionate share
5 of a sum equal to—

6 “(1) three times the total amount of State funds
7 received from the sale of waterfowl, wetland, habitat,
8 or other similar stamps, and dedicated to wetlands con-
9 servation, during the most recent fiscal year for which
10 the calculation of such funds is practicable, as deter-
11 mined by the Secretary; less

12 “(2) an amount not to exceed 4 per centum of the
13 total of amounts apportioned to States under this sec-
14 tion, to be used to defray administrative costs incurred
15 by the Secretary in making payments under this sec-
16 tion.

17 “(c)(1) The provisions of sections 6(f)(2) through 6(f)(6)
18 of this Act shall apply to financial assistance made available
19 under this section. In applying sections 6(f)(2) and 6(f)(3) of
20 this Act to this section, the references to approved projects,
21 recreation, and recreation plans shall be considered to be ref-
22 erences to wetlands or wetlands conservation, as appropriate.

23 “(2) Any amount of any apportionment under subsection
24 (b) of this section that for any fiscal year remains unobligated
25 at the close thereof shall continue to be available for obliga-

1 tion until the close of the succeeding fiscal year. Any amount
2 remaining unobligated at the end of such succeeding fiscal
3 year shall be deposited to the migratory bird conservation
4 fund established under section 4 of the Act of March 16,
5 1934 (48 Stat. 451; 16 U.S.C. 718d).

6 “(3) For purposes of this section, the term ‘wetlands
7 conservation’ means any action that assists in perserving and
8 improving wetlands, associated uplands, and wetland-related
9 fish and wildlife, including wetland resource planning, acquis-
10 tion, management, enhancement, maintenance, improvement,
11 and related surveys and studies.”

12 TITLE III—EXTENSION OF WETLANDS LOAN ACT

13 TEN-YEAR EXTENSION

14 SEC. 301. (a) The first section of the Act entitled “An
15 Act to promote the conservation of migratory waterfowl by
16 the acquisition of wetlands and other essential waterfowl
17 habitat, and for other purposes”, approved October 4, 1961
18 (75 Stat. 813; 16 U.S.C. 715k-3) (referred to in this Act as
19 the “Wetlands Loan Act”), is amended by striking out “Sep-
20 tember 30, 1983” and inserting in lieu thereof “September
21 30, 1993”.

22 (b) Section 3 of the Wetlands Loan Act (75 Stat. 813;
23 16 U.S.C. 715k-5) is amended by striking out the first three
24 sentences thereof.

1 TITLE IV—INCREASES FOR MIGRATORY BIRD
2 CONSERVATION FUND

3 PERMITS FOR CERTAIN REFUGE UNITS

4 SEC. 401. (a) Notwithstanding the provisions of the
5 Land and Water Conservation Fund Act of 1965 (78 Stat.
6 897; 16 U.S.C. 460l-4 et seq.), in order to provide additional
7 funds for the conservation of the Nation's wetland resources,
8 a migratory bird hunting and conservation stamp or any
9 other permit authorized by this section may be required for
10 entry into certain units of the National Wildlife Refuge
11 System designated by the Secretary of the Interior.

12 (b) A valid migratory bird hunting and conservation
13 stamp, as established under the Act of March 16, 1934 (48
14 Stat. 451; 16 U.S.C. 718a), shall function as an annual
15 permit for any designated unit under this section. The permit-
16 tee and any persons accompanying such permittee in a single,
17 private, noncommercial vehicle, or, alternatively, the permit-
18 tee and any accompanying spouse, children, or parents,
19 where entry to the area is by any means other than private,
20 noncommercial vehicle, shall be entitled to general entrance
21 into any area of any designated unit. Use of such stamp as a
22 permit under this subsection shall not affect the requirements
23 of the Act of March 16, 1934 (48 Stat. 451; 16 U.S.C.
24 718a), relating to the taking of migratory waterfowl.

1 (c)(1)(a) A single visit permit for any designated unit
2 shall be made available by the Secretary for persons who
3 choose not to purchase a migratory bird hunting and conser-
4 vation stamp as provided in subsection (b) of this section. The
5 Secretary may establish a reasonable charge for such permit.
6 For purposes of this subsection, "single visit" means a more
7 or less continuous stay within a designated unit by a person
8 or group described in subsection (b) of this section. A single
9 visit permit shall authorize exits from and reentries into a
10 single designated unit for a period of from one to fifteen days.
11 Such period shall be defined for each designated unit by the
12 Secretary based upon a determination of the period of time
13 reasonably and ordinarily necessary for such a single visit.

14 (2) Funds from permits under this subsection, less 10
15 per centum to be used—

16 (A) to defray administrative costs incurred by the
17 Secretary in providing for such permits; and

18 (B) for the purposes for which the designated
19 units have been established;

20 shall be paid into the migratory bird conservation fund estab-
21 lished under section 4 of the Act of March 16, 1934 (48 Stat.
22 451; 16 U.S.C. 718d).

23 (d) Any permit authorized by this section shall be non-
24 transferable and shall be available for purchase at any desig-
25 nated unit. Such permit shall not authorize any uses for

1 which fees are charged under the Land and Water Conserva-
2 tion Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 460l-4 et
3 seq.).

4 PRICE OF MIGRATORY BIRD HUNTING AND CONSERVATION
5 STAMP

6 SEC. 402. Section 2(b) of the Act of March 16, 1934
7 (48 Stat. 451; 16 U.S.C. 718b), is amended by striking out
8 "\$7.50" and inserting in lieu thereof "\$15".

9 TITLE V—GENERAL PROVISIONS

10 PRIORITY OF LAWS

11 SEC. 501. Nothing in this Act shall be construed as in-
12 dicating an intent on the part of the Congress to change the
13 existing relationship of other Federal laws to the law of a
14 State, or a political subdivision of a State, or to relieve any
15 person of any obligation imposed by any law of any State, or
16 political subdivision of a State. No provision of this Act shall
17 be construed to invalidate any provision of State or local law
18 unless there is a direct conflict between such provision and
19 the law of the State, or political subdivision of the State, so
20 that the two cannot be reconciled or consistently stand to-
21 gether. This Act shall in no way be interpreted to interfere
22 with a State's right to protect, rehabilitate, preserve, utilize,
23 manage, and restore lands within its established boundary.

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98TH CONGRESS
1ST SESSION

S. 1329

To extend until October 1, 1993, the authority for appropriations to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands and other essential habitat, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 19 (legislative day, MAY 16), 1983

Mr. CHAFEE (for himself and Mr. STAFFORD) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To extend until October 1, 1993, the authority for appropriations to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands and other essential habitat, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Emergency Wetlands
4 Resources Act of 1983".

5 FINDINGS AND STATEMENT OF PURPOSE

6 SEC. 2(a) FINDINGS.—The Congress finds that—

7 (1) wetlands play an integral role in maintaining
8 the quality of life through material contributions to our

1 national economy, food supply, water supply and qual-
2 ity, flood control, and fish, wildlife, and plant re-
3 sources, and thus to the health, safety, recreation, and
4 economic well-being of all our citizens;

5 (2) wetlands provide habitat essential for the
6 breeding, spawning, nesting, migration, wintering and
7 ultimate survival of a major portion of the Nation's mi-
8 gratory and resident fish and wildlife, including migra-
9 tory birds, endangered species, commercially and re-
10 creationally important finfish, shellfish and other
11 aquatic organisms, and contain many unique species
12 and communities of wild plants;

13 (3) our Nation's migratory bird treaty obligations
14 with Canada, Mexico, Japan, the Union of the Soviet
15 Socialist Republics, and with various countries in the
16 Western Hemisphere require Federal protection of
17 wetlands used by migratory birds for breeding, winter-
18 ing or migration and needed to achieve and to maintain
19 optimum population levels, distributions, and patterns
20 of migration;

21 (4) wetlands, and the fish, wildlife, and plants de-
22 pendent thereon, provide significant recreational and
23 commerical benefits, including—

24 (A) contributions to a commercial marine
25 harvest valued at over \$10,000,000,000 annually;

1 (B) support for a major portion of the Na-
2 tion's multi-million dollar annual fur and hide har-
3 vest; and

4 (C) fishing, hunting, birdwatching, nature ob-
5 servation and other wetland-related recreational
6 activities that generate billions of dollars annually;

7 (5) wetlands enhance the Nation's water quality
8 and supply by serving as groundwater recharge areas,
9 nutrient traps and chemical sinks;

10 (6) wetlands provide a natural means of flood and
11 erosion control by retaining water during periods of
12 high runoff, thereby protecting against loss of life and
13 property;

14 (7) wetlands constitute only a small percentage of
15 the land area of the United States, are estimated to
16 have been reduced by half in the contiguous States
17 since the founding of our Nation, and continue to dis-
18 appear by hundreds of thousands of acres each year;

19 (8) certain activities of the Federal Government
20 have inappropriately altered or assisted in the alter-
21 ation of wetlands, thereby unnecessarily stimulating
22 and accelerating the loss of these valuable resources
23 and the environmental and economic benefits that they
24 provide; and

(a) "Committees" means the Committee on Merchant Marine and Fisheries of the House of Repre-

1 representatives and the Committee on Environment and
2 Public Works of the Senate;

3 (b) "Secretary" means the Secretary of the Interi-
4 or; and

5 (c) "wetland" means land transitional between
6 terrestrial and aquatic systems where the water table
7 is usually at or near the surface or the land is covered
8 by shallow water. Generally, wetlands are areas uninun-
9 dated or saturated by surface or ground water fre-
10 quently enough and for long enough duration to sup-
11 port a prevalence of plants or animals typically adapted
12 to life in saturated soil conditions including but not lim-
13 ited to such areas as coastal or inland marshes or estu-
14 aries, river-associated water-saturated areas, inland
15 lakes, potholes, bogs, mudflats, or bottomland hard-
16 wood forests.

17 TITLE I. EXTENSION OF WETLANDS LOAN ACT

18 SEC. 101. (a) the first section of the Act entitled "An
19 Act to promote the conservation of migratory waterfowl by
20 the acquisition of wetlands, and for other essential waterfowl
21 habitat, and for other purposes", approved October 4, 1961
22 (75 Stat. 813; 16 U.S.C. 715k-3) (referred to in this Act as
23 the "Wetlands Loan Act"), is amended by striking out "Sep-
24 tember 30, 1983" and inserting in lieu thereof "September
25 30, 1993".

1 (b) Section 3 of the Wetlands Loan Act (75 Stat. 813:
2 16 U.S.C. 715k-5) is amended by striking out the first three
3 sentences thereof.

4 TITLE II. REVENUES FOR MIGRATORY BIRD
5 CONSERVATION FUND

6 ADMISSION FEES AT CERTAIN REFUGE UNITS

7 SEC. 201. (a) Notwithstanding the provisions of the
8 Land and Water Conservation Fund Act of 1965 (78 Stat.
9 897; 16 U.S.C. 4601-4 et seq.), in order to provide addition-
10 al revenues for the conservation of the Nation's wetland re-
11 sources, entrance or admission fees may be charged at cer-
12 tain units of the National Wildlife Refuge System designated
13 by the Secretary of the Interior for such fees (referred to in
14 this Act as "designated units").

15 (b) A valid migratory bird hunting and conservation
16 stamp, as established under the Act of March 16, 1934 (48
17 Stat. 451; 16 U.S.C. 718a), as amended, or a valid Golden
18 Eagle Passport, as established under the Land and Water
19 Conservation Fund Act of 1965 (78 Stat. 897; 16 U.S.C.
20 4601-4 et seq.), shall function as a permit for entry into any
21 designated unit. Use of a valid migratory bird hunting and
22 conservation stamp as a permit under this subsection shall
23 not affect the requirements of the Act of March 16, 1934 (48
24 Stat. 451; 16 U.S.C. 718a), as amended, relating to the
25 taking of migratory waterfowl.

1 (c)(1) Permits for a single visit to any designated unit
2 shall be made available by the Secretary of the Interior at
3 reasonable admission fees for persons who choose not to pur-
4 chase an annual permit as provided in subsection (b) of this
5 section. For purposes of this subsection, "single visit" means
6 a more or less continuous stay within a designated unit by a
7 person or group described in subsection (d) of this section.
8 Payment of a single visit admission fee and issuance of a
9 single visit permit shall authorize exits from and re-entries to
10 a single designated unit for a period of from one to fifteen
11 days. Such period shall be defined for each designated unit by
12 the Secretary based upon a determination of the period of
13 time reasonably and ordinarily necessary for such a single
visit.

15 (2) Notwithstanding section 401 of the Act of June 15,
16 1935 (49 Stat. 383; 16 U.S.C. 715a), as amended, revenues
17 from permits under this subsection, less 10 per centum to be
18 used—

19 (A) to defray administrative costs incurred by the
20 Secretary in providing for such permits; and

21 (B) for the purposes for which the designated
22 units have been established;
23 shall be paid into the migratory bird conservation fund estab-
24 lished under section 4 of the Act of March 16, 1934 (48 Stat.
25 451; 16 U.S.C. 718d), as amended.

1 (d) A permittee pursuant to subsection (b) or (c) of this
2 section and any persons accompanying such permittee in a
3 single, private, noncommercial vehicle, or, where entry to the
4 area is by any means other than a single, private noncom-
5 mercial vehicle, the permittee and any accompanying spouse,
6 children, or parents shall be entitled to general entrance into
7 any designated unit.

8 (e) The Secretary of the Interior shall establish proce-
9 dures providing for the issuance of a lifetime admission
10 permit to any citizen of, or person domiciled in, the United
11 States, if such citizen or person applies for such permit, and
12 is blind, or permanently disabled. Such procedures shall
13 assure that such permit shall be issued only to persons who
14 have been medically determined to be blind or permanently
15 disabled for purposes of receiving benefits under Federal law
16 as a result of said blindness or permanent disability as deter-
17 mined by the Secretary. Such permit shall be nontransferable
18 and shall be issued without charge.

19 (f) The Secretary of the Interior shall establish proce-
20 dures providing for the issuance of a lifetime admission
21 permit to any citizen of, or person domiciled in, the United
22 States, if such citizen or person applies for such permit, and
23 is sixty-two years of age or older. Such permit shall be non-
24 transferable and shall be issued without charge.

1 (g) Special admission permits for uses such as group ac-
2 tivities, or for travel by private, noncommercial vehicle over
3 any road or highway to any land in which a permittee has a
4 property interest if such land is within any designated unit,
5 may be issued in accordance with procedures and at fees es-
6 tablished by the Secretary. Revenues from such permits shall
7 be paid into the migratory bird conservation fund established
8 under section 4 of the Act of March 16, 1934 (48 Stat. 451;
9 16 U.S.C. 718d), as amended.

10 (h) Any permit authorized by this section shall be non-
11 transferable and shall be available for purchase at any desig-
12 nated unit. Such permit shall not authorize any uses for
13 which fees are charged under the Land and Water Conserva-
14 tion Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 4601-4 et
15 seq.).

16 (i) All fees established pursuant to this section shall be
17 fair and equitable, taking into consideration the direct and
18 indirect cost to the Government, the benefits to the recipient,
19 the public policy or interest served, the comparable fees
20 charged by non-Federal public agencies, the economic and
21 administrative feasibility of fee collection and other pertinent
22 factors. Clear notice that a fee has been established pursuant
23 to this section shall be prominently posted at each designated
24 unit and at appropriate locations therein and, to the extent

1 practicable, shall be included in publications distributed at
2 such units.

3 (j) Periodic reports indicating the number and location of
4 fee collection areas, the number and location of potential fee
5 collection areas, capacity and visitation information, the fees
6 collected, and other pertinent data, shall be coordinated and
7 compiled by the United States Fish and Wildlife Service and
8 transmitted to the Committee on Merchant Marine and Fish-
9 eries of the United States House of Representatives and the
10 Committee on Environment and Public Works of the United
11 States Senate. Such reports, which shall be transmitted no
12 later than March 31 annually, shall include any recommenda-
13 tions which the Service may have with respect to improving
14 this aspect of the migratory bird conservation fund program.

15 PRICE OF MIGRATORY BIRD HUNTING AND CONSERVATION

16 STAMP

17 SEC. 202. Section 2(b) of the Act of March 16, 1934
18 (48 Stat. 451; 16 U.S.C. 718b), as amended, is amended by
19 striking out "\$7.50" and inserting in lieu thereof "\$10.00"
20 and by striking out "any hunting year" and inserting in lieu
21 thereof "hunting years 1984 and 1985, \$12.50 for hunting
22 years 1986 and 1987, and \$15.00 for each hunting year
23 thereafter,".

1 TRANSFERS TO MIGRATORY BIRD CONSERVATION FUND

2 SEC. 203. Notwithstanding any other provision of law,
3 all import duties collected on arms and ammunition, as speci-
4 fied in subpart A of part 5 of schedule 7 of the Tariff Sched-
5 ules of the United States, shall, beginning on the date of the
6 enactment of this Act, be paid into the migratory bird conser-
7 vation fund established under section 4 of the Act of March
8 16, 1934 (48 Stat. 451; 16 U.S.C. 719d), as amended.

9 SEC. 204. For the period beginning on October 1, 1983,
10 and ending at the close of September 30, 1993, \$75,000,000
11 shall be paid each year from the land and water conservation
12 fund established under the Land and Water Conservation
13 Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 4601-4 et seq.)
14 into the migratory bird conservation fund established under
15 section 4 of the Act of March 16, 1934 (48 Stat. 451; 16
16 U.S.C. 718d), as amended.

17 TITLE III—FINANCIAL ASSISTANCE TO STATES
18 FOR WETLANDS ACQUISITION

19 SEC. 301. (a) Subsection (b) of section 4 of the Act of
20 March 16, 1934 (48 Stat. 451; 16 U.S.C. 718d), as amend-
21 ed, is amended by striking out "subsection (c)" and inserting
22 in lieu thereof "subsections (c) and (d)".

23 (b) Section 4 of the Act of March 16, 1934 (48 Stat.
24 451; 16 U.S.C. 718d), as amended, is amended by inserting
25 at the end thereof the following new subsection:

1 “(d)(1) For the period beginning on October 1, 1983,
2 and ending at the close of September 30, 1993, the Secretary
3 of the Interior is authorized to provide from the fund financial
4 assistance not to exceed \$50,000,000 annually to the States
5 for purposes of wetlands acquisition, as defined in subsection
6 (d)(2) of this section. Payments for such purposes may be
7 made to the States as hereinafter provided, subject to such
8 terms and conditions as the Secretary considers appropriate
9 and in the public interest.

10 “(2) For purposes of this subsection, the term ‘wetlands
11 acquisition’ means obtaining a property interest in wetlands
12 or associated areas by purchase or lease if obtaining such in-
13 terest contributes appreciably to the preservation of said wet-
14 lands and associated populations of fish, wildlife and plants.

15 “(3) Sums available from the fund for wetlands acquisi-
16 tion under this subsection shall be apportioned among the
17 States by the Secretary, whose determination shall be final,
18 on the basis of (i) the ratio which each State’s obligation of
19 funds, other than Federal funds, to wetlands acquisition bears
20 to the total amount of funds, other than Federal funds, obli-
21 gated by the States to wetlands acquisition during the most
22 recent fiscal year for which the calculation of such funds is
23 practicable, as determined by the Secretary; less (ii) an
24 amount not to exceed 1 per centum of the total of amounts
25 allocated to the States under this subsection, to be used to

1 defray administrative costs incurred by the Secretary in
2 making payments under this subsection. Such apportionments
3 shall be adjusted equitably so that no less than one-half of 1
4 per centum of the total amount apportioned shall be allocated
5 to each State.

6 “(4) A State may elect to avail itself of the benefits of
7 this subsection by:

8 “(A) submitting to the Secretary a comprehensive
9 fish and wildlife resource management plan which shall
10 ensure the perpetuation of these resources for the eco-
11 nomic, scientific and recreational enrichment of the
12 people. Such plans will be prepared with opportunity
13 for public comment and provided in a format required
14 by the Secretary which shall be compatible with stand-
15 ards and formats required of States for other fish and
16 wildlife grants administered by the Secretary, particu-
17 larly the Federal Aid in Wildlife Restoration Act (16
18 U.S.C. 669 et seq.), Federal Aid in Sport Fish Resto-
19 ration Act (16 U.S.C. 777 et seq.), and Fish and Wild-
20 life Conservation Act of 1980 (16 U.S.C. 2901 et
21 seq.). If the Secretary finds that such plans conform to
22 standards established by him and approves such plans,
23 he may finance up to 75 per centum of the cost of im-
24 plementing segments of those plans meeting the pur-

1 poses of this subsection from funds apportioned under
2 this subsection; or

3 "(B) submitting to the Secretary full and detailed
4 statements of any wetlands acquisition project proposed
5 for that State. If the Secretary finds, after opportunity
6 for public comment, that such project meets with the
7 standards set by him and approves said project, the
8 State shall furnish the Secretary such surveys, plans,
9 specifications, and estimates therefore as may be re-
10 quired. If the Secretary approves the plans, specifica-
11 tions, and estimates for the project, he shall so notify
12 the State within ninety days of receiving said plans,
13 specifications, and estimates and immediately set aside
14 so much of the fund as represents the share of the
15 United States payable under this subsection on account
16 of such project, which sum so set aside shall not
17 exceed 75 per centum of the total estimated cost
18 thereof.

19 "(5) The Secretary shall approve only such comprehen-
20 sive plans or projects as may be substantial in character and
21 design and the expenditure of funds hereby authorized shall
22 be applied only to such approved wetlands acquisition plans
23 or projects and if otherwise applied they shall be replaced by
24 the State before it may participate in any further appor-
25 tionment under this subsection. No payment of any money appor-

1 tioned under this subsection shall be made on any compre-
2 hensive wetlands acquisition plan or project until an agree-
3 ment to participate therein shall have been submitted to and
4 approved by the Secretary.

5 “(6) When the Secretary finds that any approved project
6 or segment of an approved comprehensive plan has been
7 completed in compliance with approved plans and specifica-
8 tions or an approved comprehensive plan the Secretary shall
9 cause to be paid to the proper authority of such State the
10 amount set aside for said project or plan. The Secretary may
11 from time to time make payments on said project or plan as
12 the same progresses; but these payments, including previous
13 payments, if any, shall not be more than the United States’
14 pro rata share of the project in conformity with said plans
15 and specifications or said comprehensive plan.

16 “(7) Any amount of any apportionment under paragraph
17 (3) of this subsection that for any fiscal year remains unobli-
18 gated at the close thereof shall continue to be available for
19 obligation until the close of the succeeding fiscal year. At the
20 close of such succeeding fiscal year, such amounts shall
21 remain in the migratory bird conservation fund established
22 under section 4 of the Act of March 16, 1934 (48 Stat. 451;
23 16 U.S.C. 718d), as amended, and shall become available for
24 expenditure under said Act.

3 TITLE IV. WETLANDS INVENTORY AND TREND
4 ANALYSIS

(1) produce, by September 30, 1986, final National Wetlands Inventory maps for the areas that have been identified by the Service as top priorities for mapping, including the entire coastal zone of the United States, floodplains of major rivers and the Prairie Pothole Region;

(2) produce, by September 30, 1988, final National Wetlands Inventory maps for those portions of the contiguous United States for which final maps have not been produced earlier;

(5) produce, as soon as practicable, final National Wetlands Inventory maps for Alaska and other non-contiguous portions of the United States; and

(4) produce, by September 30, 1985, and at ten year intervals thereafter, reports to update and improve the information contained in the report dated September 1982 and entitled "Status and Trends of

1 Wetlands and Deepwater Habitat in the Coterminous
2 United States, 1950's to 1970's''.

3 (b) There is authorized to be appropriated the following
4 sums, to remain available until expended:

5 (1) \$7,000,000 per fiscal year for the fiscal years
6 beginning on October 1, 1983, and ending at the close
7 of September 30, 1986, to carry out paragraph (1) of
8 subsection (a) of this section;

9 (2) \$5,000,000 per fiscal year for the fiscal years
10 beginning on October 1, 1987 and ending at the close
11 of September 30, 1993, to carry out paragraphs (2)
12 and (3) of subsection (a) of this section; and

13 (3) \$3,000,000 per fiscal year for the fiscal years
14 beginning on October 1, 1983 and ending at the close
15 of September 30, 1995, to carry out paragraph (4) of
16 subsection (a) of this section.

17 REPORT TO CONGRESS

18 SEC. 402. (a) The Secretary shall, by September 30,
19 1985, prepare and submit to the Committees a report regard-
20 ing wetlands losses in the United States.

21 (b) The report required under subsection (a) shall con-
22 tain—

23 (1) an analysis of the causes of wetlands destruc-
24 tion and degradation;

1 (2) a compilation and analysis of Federal statutory
2 and regulatory mechanisms, including expenditures and
3 financial assistance, which induce wetlands destruction
4 or degradation;

5 (3) a compilation and analysis of Federal expendi-
6 tures resulting from wetlands destruction and degrada-
7 tion;

8 (4) an analysis of the environmental and economic
9 impact of eliminating or restricting future Federal ex-
10 penditures and financial assistance, whether direct or
11 indirect, which have the effect of encouraging the de-
12 struction or degradation of wetlands, including but not
13 limited to: public works expenditures; assistance pro-
14 grams such as price support programs, commodity
15 loans and purchase programs and disaster assistance
16 programs; soil conservation programs; and certain
17 income tax provisions.

18 (5) an analysis of the environmental and fiscal
19 impact of failure to restrict future Federal expenditures
20 and financial assistance which have the effect of en-
21 couraging the destruction or degradation of wetlands,
22 including but not limited to: assistance for normal silvi-
23 culture activity (such as plowing, seeding, planting,
24 cultivating, minor drainage, or harvesting for the pro-
25 duction of fiber or forest products); Federal expendi-

1 tures required incident to studies, evaluations, design,
2 construction, operation, maintenance, or rehabilitation
3 of Federal water resource development activities, in-
4 cluding channel improvements; the commodity loans
5 and purchases program and cotton, feed grain, wheat,
6 and rice production stabilization programs administered
7 by the Department of Agriculture; Federal expendi-
8 tures for the construction of publicly owned or publicly
9 operated highways, roads, structures, or facilities that
10 are essential links in a larger network or system; and
11 general revenue sharing grants made under section 102
12 of the State and Local Fiscal Assistance Amendments
13 of 1972 (86 Stat. 919; 31 U.S.C. 1221); and

14 (6) recommendations for the conservation of wet-
15 lands resources based on an evaluation and comparison
16 of all management alternatives, and combinations
17 thereof, such as State and local actions, Federal ac-
18 tions, and initiatives by private organizations and indi-
19 viduals.

20 (c) There is authorized to be appropriated \$1,000,000 to
21 carry out the provisions of this section, which sum shall be
22 available until expended.

WETLAND CONSERVATION

WEDNESDAY, AUGUST 10, 1983

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION,
Aberdeen, S. Dak.

The subcommittee met at 9:30 a.m., in the Sheraton Inn, Aberdeen, S. Dak., Hon. James Abdnor presiding.

Present: Senators Abdnor and Chafee.

Senator ABDNOR. With us today is Helen Miller from the chamber of commerce. Helen, would you step forward? We are happy to have you here. Do you have a statement?

STATEMENT OF HELEN MILLER, ABERDEEN CHAMBER OF COMMERCE

Ms. MILLER. I guess I can use the mike from this side of the table. Senator Chafee and Senator Abdnor, it's a pleasure to have you here today. Governor Olson, nice to have you here and other dignitaries and panel guests.

These are issues which are of vital importance to the citizens of our area, of the Aberdeen and South Dakota area. I congratulate Senator Chafee who, from the distance of Washington, D.C., and Rhode Island, was perceptive enough to realize, even though we are sometimes overshadowed by two other South Dakota cities who claim more populated, that you sensed the true vitality of South Dakota lies in Aberdeen. We appreciate that a great deal.

Governor Olson, it's nice to have a Governor who visits South Dakota without feeling threatened. We promise not to conduct any boarder raids during the rest of the week.

Again, it's a pleasure to have you all here. It's an honor for Aberdeen to have you for this event.

OPENING STATEMENT OF HON. JAMES ABDNOR, U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator ABDNOR. Well, Helen, that's a good note to start our meeting out on and we thank you for those very warm remarks. I, too, want to welcome Governor Olson and Senator Chafee here today. I think it's very appropriate we are having the hearing in Aberdeen. It's the center of the wetlands of South Dakota, North Dakota, and the Nation. The subject we are going to discuss is of great importance to all of you which is witnessed by this large crowd that has turned out.

I'm particularly happy to have my colleague Senator John Chafee who made this special effort to come to South Dakota and the way it worked out it was very special, Senator. A lot of people would have said, "I'm unable to go," and not come. But this gentleman has a genuine interest in the subject matter and he has a great interest in this Nation. He may represent one of the smallest States in the Nation in square miles as Rhode Island is, but his interest is great when it comes to America and what makes it great.

He's concerned about the wildlife of this Nation and he knows the importance in the part it plays. We are very grateful he came out here today to help us with our meeting.

I think all of you know he has had a very distinguished career in public life. I won't try to go into it. A great record that he had in World War II and he was Governor of Rhode Island and Secretary of the Navy and truly one of the leaders of the U.S. Senate. I'm really honored by his presence.

Also, Galen Buterbaugh, the Regional Director of the U.S. Fish and Wildlife Service at my right, has agreed to come out because of his great interest. I'm glad he will be hearing the information presented to us today from the various witnesses.

I might say two of our prominent staff members on the subject are here, Steve Shimberg, Steve to the left of Senator Chafee, and also Martha Pope. They have had a tour of our wetlands so that they better understand the situation. We are delighted they are all here today, and we all know the necessity of the hearing. I wanted Senator Chafee to hear what the people had to say. We are all interested in wildlife and we know we are in the heart of it right here in this area of the Nation. The best way to make your concern known is to bring the legislators involved out to you. It's a lot easier than trying to take you to Washington, and that's what we are doing today.

Senator, let me turn the mike over to you.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Thank you very much, Jim. First I want to say what a treat it is for me to be here in Aberdeen, S. Dak. Everybody's been so hospitable. We had a wonderful tour yesterday. I appreciate so much the hospitality your wonderful Senator Jim Abdnor has extended to me. As you know, he's a very, very, valuable public servant. He has served South Dakota so well in the U.S. Senate and he's one of the most able and respected men around, that nobody can know Jim Abdnor without liking him. He's one of the most popular Senators in the U.S. Senate.

It's nice to see Governor Olson who took the time to come down from North Dakota to be here today.

I'm here because I believe in what Yogi Berra said, you can see a lot by looking, and so, yesterday we went around and saw some of the wetlands. We saw some of the prairie potholes and saw the efforts that are being made and also we want to hear some of the concerns you have. This is part of a national concern, the preservation of wetlands.

When we discuss wetlands, I don't want anybody to think we are picking on South Dakota or North Dakota or this area generally. It extends to my State which, as you know, is a coastal State where we are trying to preserve the marshlands, as well as the inland wetlands. It extends right across the whole country because wetlands are not solely a matter of wildlife concern, although that's the most visible. Wetlands act as a screening agent, as a purification you might say for the ground water, for the aquifers. They are areas that are extremely important for the overflow from the rivers that flood.

Perhaps, as you know down in the lower part of Mississippi, there's been so much channelization and filling in of the wetlands that they have had these disastrous floods where once upon a time the heavy or swollen Mississippi would pour over, and the wetlands were there, available in the years gone past, to take the overflow which is no longer possible.

And what's happening in the country is rapid disappearance of the wetlands all across the Nation. It's estimated that half of the wetlands have disappeared since the early days of the colonists and still disappear at the rate of 700 square miles a year.

So we are trying to see what we can do to preserve this very, very important national asset, at the same time taking into consideration the concerns of those who are most directly affected. I don't want anybody to feel that this is the heavy hand of the Federal Government coming in and trying to brush aside the concerns of the local people. That isn't so. That's one of the reasons that we are here holding this hearing today.

I have a very fine letter from Larry Pressler, your outstanding Senator who unfortunately could not be present, who has a statement which I will submit for the record. (See p. 198.)

I can say that I have had many hearings and, of course, we have them in Washington, as Jim knows, and other parts of the country, and never has one been better attended than this one. We have a considerable list of witnesses and I look forward to hearing the testimony of each of them.

Again, Jim, thank you for all of the things you have done to make this such a pleasant visit for me and it's pointed out that not too many people come to Aberdeen. I don't know why. I think everybody should come to Aberdeen. It's a nice place and I'm glad to be here. Thank you.

[Senator Pressler's statement follows:]

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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
 AND TRANSPORTATION
 WASHINGTON, D.C. 20510

August 9, 1983

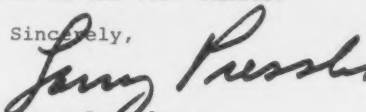
The Honorable John H. Chafee
 Chairman
 Subcommittee on Environmental Pollution
 Committee on Environment and
 Public Works
 61A-Capitol Hill Annex
 Washington, D.C. 20510

Dear John:

Thank you for the invitation to testify at your August 10 hearing on wetlands in Aberdeen, South Dakota. Unfortunately, I cannot be present, but I would like to submit the attached statement for the record.

I would like to commend you for holding these hearings and thank you for allowing me to express my opinion on the important issue of wetlands. I look forward to continuing to work with you on environmental issues in the U.S. Senate.

Sincerely,



Larry Pressler
 United States Senator

LP/muk

Enclosure

STATEMENT OF SENATOR LARRY PRESSLER

HEARING ON WETLANDS

August 10, 1983

I first want to commend you for holding these important hearings and for selecting Aberdeen as the site of the hearing. The Aberdeen area has many wetlands and also a great deal of public interest in the future of these wetlands.

Wetlands and the preservation of wetlands are very important to both South Dakota and the United States. Wetlands are essential to continued good hunting and fishing in many areas and millions of Americans enjoy these recreational activities. In 1980, 46.7 million Americans (27 percent of the total population over 16 years of age) either went fishing or hunting. South Dakota was among the top states in the percentage of participation with 198,000 (40 percent) citizens either hunting or fishing. In addition to the people hunting and fishing, over 93 million Americans 16 years or older participated in at least one of four non-consumptive activities involving wildlife. Expenditures for all of these activities in the United States totaled \$41.9 billion in 1980. As you can see, many Americans enjoy wildlife in one way or another and many others are economically dependent on wildlife activities.

Wetlands are an important area for wildlife breeding, feeding and habitat. In addition to wildlife benefits, wetlands also retain and recycle nutrients, control flooding by storing spring runoff, and help to recharge water-table aquifers. The number

of wetlands and acres involved fluctuates from year to year, depending on precipitation and other factors. Also, with the increasing intensity in agriculture, more and more wetlands are being drained. In the prairie pothole region of North Dakota, South Dakota, Minnesota and northeastern Montana, it has been estimated that 20 to 40 percent of the natural wetlands have been wholly or partially drained. In recent years, the drainage rate has been estimated at 2 to 5 percent annually. Nationally, approximately half of the 215 million wetland acres have been destroyed and nearly one-half million acres are lost annually. These figures show the importance and need for an effective wetland management and preservation program.

Several federal and state programs help to maintain wetland areas. The federal programs include the waterbank program through the Department of Agriculture; the Wetlands Loan Act, Land and Water Conservation Fund and the Migratory Bird Conservation Fund, all administered by the Department of Interior. In general, these programs have been successful in maintaining wetlands, but as evidenced by the continued loss of wetland areas, additional work is needed.

I suggest that several actions be taken to preserve wetlands:

- eliminate any federal assistance to farmers or others for draining or filling wetlands. Currently, legislation is moving through Congress to prohibit any farm program benefits from going to newly-plowed fragile land. We should look at taking similar steps to eliminate some of the benefits of draining wetlands.
- the federal government, as well as states, must continue to purchase valuable wetlands and preserve them. Expanded leasing arrangements with

private landowners who agree to maintain wetlands should also be explored.

--the federal government should continue to monitor the draining or filling of wetlands.

These are just three suggestions to help preserve wetlands. There are many other proposals that also need to be evaluated and I am sure many will be discussed at the hearing. Whatever method is used to preserve wetlands, it is important that action is taken soon before our nation's wetlands are lost. Once a wetland area is filled, it cannot be returned to its original state.

In conclusion, I want to thank you once again for holding this hearing in Aberdeen and for allowing me to express my views.

Larry Pressler

Senator ABDNOR. Thank you, Senator Chafee, and we are very happy to have you. Without you we wouldn't have this hearing.

You mentioned Senator Pressler, I would like to say that one of his assistants, Jan Clark, is here with us today. So if anyone would like to, you can see her.

I just want to say we are here to address the management of two extremely important natural resources, the wetlands and the water. Both have a pronounced impact on the environment and economy in our State and country.

Senator Chafee, you should be commended also for your legislation to protect our wetland resources and at the same time allow us to develop a broader and stronger economic base for South Dakota. I'm a strong supporter for responsible water development. I think everyone here knows that. But without this development South Dakota will never have the opportunity to achieve her potential. At the same time I believe we have a strong obligation to protect the abundant wetlands located in our part of the prairie pothole region.

We recognize that these wetlands have made the Dakotas and Minnesota the richest waterfowl nesting and feeding area in our Nation. The people of South Dakota are proud of their abundant wildlife resources and we make every reasonable effort to protect these resources for future generations to appreciate and enjoy.

South Dakota, however, has not been equally blessed in terms of economic resources. Agriculture is our main industry and we are dependent on this industry to provide jobs and economic growth for

South Dakota. The difficulties of our farming economy has suffered throughout drought periods and posed serious economic difficulties for the people of this State.

The Federal Government undertook the construction of four huge Missouri River reservoirs in South Dakota and we relinquished over 500,000 acres and Governor Olson and his people relinquished even more, of our prime agricultural land to protect our downstream neighbors from periodically devastating floods. These dams were constructed on the Pick Sloan program authorized by the Flood Control Act of 1944 and the Dakotas were promised large-scale irrigation development out of the reservoirs to help stabilize our agricultural economy and to compensate us for the loss of inundated farmland.

While the irrigation projects were authorized in the 1944 act along with the flood control dams themselves, not one acre of irrigation has been developed under the Pick Sloan program out of the mainstream reservoirs in South Dakota.

I believe that agriculture development and wetlands protection can be compatible, not conflicting. We must, and can, provide for economic advancement which is imperative in this State while still preserving the wildlife habitat base which makes this State unique. Through improved management and better project design we can substantially avoid a reduced wetland impact. Also, with irrigation development we can create new wetlands to offset any unavoidable wetland losses.

Current legislation now before the Congress will extend the authority for the wetland loan program for another decade. We support a wetland acquisition program which involves willing sellers. The residents of South Dakota, however, would have serious questions about any legislation that denies us the same development opportunities other States have enjoyed.

We are protecting our wetlands and should not be penalized because others have been less responsible. We must have a balanced program that allows for reasonable development that recognizes the tax base values of wetlands and that preserves our valuable wetland resources.

In conclusion, I want to reiterate that South Dakotans are committed to the protection of wildlife habitat and we are pleased to contribute our fair share. At the same time we shall continue to pursue a responsible water development program that will provide for the future of South Dakota. It's my hope that this hearing will be a major step in that direction.

I look forward to having the views of all of our witnesses and again I want to thank Senator Chafee for taking the time from his schedule to come to our State.

With that, I'm sure that's the longest wait that Governor Olson has ever had to sit through before he got the opportunity to say a few words.

We know the impact of this legislation on North Dakota. We know the part you have played in trying to bring forth some reasonable legislation in cooperation with Senator Chafee and the special committee you are serving on. I can't thank you enough Governor, for taking the time and flying down this morning to be our first witness. You have with you Mr. Dale Henegar, who we wel-

come, a former South Dakotan, and we are happy to have him back in our State. He certainly understands our problems. We have a lot of mutual problems and we do work well together and I'm happy to have you here, Governor Olson.

**STATEMENT OF HON. ALLEN I. OLSON, GOVERNOR, STATE OF
NORTH DAKOTA**

Governor OLSON. Thank you Senator Chaffe and Senator Abdnor. As you indicated I brought with me a body guard. A native South Dakotan who I was privileged to appoint as North Dakota Game and Fish Commissioner, and he's a native South Dakotan. A graduate of South Dakota State University and one of the more distinguished fishery biologists in this country.

I do say that North and South Dakota have cooperated in many efforts, not the least of which have been water projects and both States have a very deep and abiding interest in it, and also transportation issues that have been of very extreme concern of Governor Janklow and the people of the State of South Dakota.

It's a privilege to appear before the committee and give my views on the importance of protecting our wetland resource, and recommendations on policy matters to be considered by the Congress through the legislation pending before this committee and concerns of the State of North Dakota as represented by the wetlands policy resolution adopted by the North Dakota Legislature.

My testimony is offered from the perspective and duties as Governor and from the perspective as chairman of the National Governors' Association Task Force on Soil Conservation and as a member of the Protect Our Wetlands and Duck Resources Advisory Committee, membership I share with Senator Chafee.

The protection of our wetland resource, like this Nation's soil conservation effort, is a private, local, State, and National Government responsibility requiring coordination and cooperation at all levels of participation. The success of our soil conservation program is primarily due to 50 years of application of this concept of cooperation.

The success of our soil conservation program is primarily due to 50 years of application of this concept of cooperation. If we are to be as successful in the conservation of wetlands this concept must be incorporated into any national program considered by the Congress. Past efforts at wetland protection have been conducted almost exclusively by the Federal Government. This monolithic approach has been replete with problems and faced resistance from State and local governments and private landowners.

Mr. Chairman, I can assure you the conservation ethic to protect our wetland resource exists within the ethic to protect our soil resource—a resource I characterize, and continue to do so, as the Nation's treasure. An example of this ethic is enshrined in this very area around Aberdeen and to the north a few miles into the sand hill area of my State of North Dakota. The heat, wind, and drought of the thirties left the land parched and barren, resulting in unprecedented soil erosion. It also left a society of farmers and small town business people desperate—many too down and out to start again in this place—resulting in one of the greatest migrations and

population shifts in our Nation's history. For those who stayed to heal the land and turn the Great Plains into the greatest food factory in the world, we own a national monument of recognition. This healing process required 20 years of joint cooperation from the farmer to the Federal Government. It has required another 30 years of cooperative stewardship of the land to insure we never again experience such natural and human destruction. And as recognized this month by the Nation's Governors through the adoption of the policy recommendations of the task force on soil conservation, the Congress and the national administration, together with State and local governments must continue to give the highest of priority to the support of our soil stewardship program.

This formula of success must be incorporated into any future wetlands program. Any wetlands program does recognize this as a necessity has, in my opinion, no future.

I have three specific recommendations which I ask this committee to review in its consideration of wetlands legislation. First, for too long we have attempted to encourage land owner wetland conservation practices through disincentives rather than incentives. I am pleased to see the draft legislation pending before this committee avoids the conflict with farmers by exempting participation in Federal agricultural grain commodity programs. While I am a strong supporter of the removal from existing farm programs, specifically the PIK program, of provisions which discourage or penalize farmers for conservation practices, this is a complex issue requiring careful review by the Congress in order to avoid any broad brush approach which could be harmful to an already fragile farm economy.

Second, I urge you to give careful consideration to tax credit legislation which would provide landowner incentives to wetland protection. I have submitted such a proposal to Secretary Watt's Advisory POWDR Committee which I will be hosting in North Dakota at its next meeting where this proposal will be a major agenda item. Any tax credit proposal must recognize the necessity of a provision for Federal payments in lieu of property taxes, either through the States or directly to county governments. Unless counties are made whole, in order to meet increased demands for services, a tax credit incentive program will not be acceptable to State or local governments.

The farmer will respond to an incentive program which makes it economically possible for him to preserve or restore wetlands on which he presently pays a property tax but receives no direct economic return.

Third, this committee and the Congress should give careful review to the success or failure of the past small wetlands/waterfowl production area programs. Approximately \$147 million has been spent to date on these programs and there exists a difference of opinion among waterfowl habitat experts on the effectiveness of these programs on increasing duck population. Before the loan forgiveness provision of the present legislation is adopted, I urge a thorough investigation of this matter. We must avoid past mistakes in any future programs.

I would like to share with the committee some of the concerns of my State which result from what we regard as past mistakes in the administration of the existing wetlands program.

The Waterfowl Production Area Acquisition program has been a sensitive issue in North Dakota. The sensitivity is best demonstrated by a resolution adopted by the North Dakota Legislative Assembly in 1983. House Concurrent Resolution 3091 urges that any extension of the Wetlands Loan Act should contain the following provisions:

One, a requirement that new gubernatorial consents must be secured by the Secretary of the Interior for any waterfowl production area acquisitions after October 1, 1983;

Two, all payments in lieu of taxes (pursuant to 16 U.S.C. 715s) must have been made for the 5 consecutive previous years before the Secretary of the Interior may acquire waterfowl production areas or refuges in North Dakota;

Three, payments in lieu of taxes may be made from the Migratory Bird Conservation Fund if adequate "in lieu" payments are not appropriated; and

Four, the 764,522 acres of wetlands on all pre-1976 waterfowl production area easements must be delineated. And that is the most sensitive area of the many sensitive issues that exist under those past and present programs.

It is unfortunate that Legislative Assembly considered such a resolution necessary, however, the State considers new gubernatorial consent necessary for any waterfowl production area acquisitions under a Wetlands Loan Act extension.

North Dakota played a significant role in the passage of legislation which authorized payments in lieu of taxes for fee waterfowl production areas. However, in only 1 of 6 fiscal years since 1976 has full payment been made to local governments.

Payments in lieu of taxes should be paid from the Migratory Bird Conservation Fund if adequate funds are not otherwise appropriated. Again, prior financial commitments to the State and its political subdivisions should be honored before any further acquisitions. And I think you recognize how significant that is in whether or not States and local governments support Federal legislation and Federal programs.

Finally, it is the State's position that all wetlands subject to easement must be clearly delineated and quantified so that landowners may be protected and the requirement of the gubernatorial consent provision may be met.

In closing, Mr. Chairman, I want to commend you for your leadership in the Senate to bring about a renewed effort to protect our wetland resources and for your recognition of the need to investigate new approaches to bring out the conservation ethic necessary in any successful program.

Senator Abdnor, your leadership in the Senate with respect of the conservation of our water resources deserves greater recognition than it has ever had. The attention and understanding you bring to your colleagues in the Senate and the Congress concerning the water resource needs of the Upper Missouri River Basin has been most helpful to us in North Dakota, and I thank you on behalf of my constituents for that help. Through your leadership

this better understanding of our needs has helped foster a new era of cooperation within the Congress in meeting the challenges and opportunities presented by our natural resources.

Thank you, Mr. Chairman and Senator Abdnor for the opportunity to present my views to your committee. Do you have any questions?

Senator CHAFEE. Thank you very much Governor Olson for that very fine statement. A couple of questions. I think this delineation matter will probably come up quite a bit and I take it that the problem is that when Fish and Wildlife takes an easement they have been rather vague as to how much or what exactly they are taking, is that the problem?

Governor OLSON. The problem is the description would generally suggest at 80 or 40 acre or perhaps a 160 acre parcel, but the intent of the parties apparently was that the wetland area within that larger legally described parcel was what in fact was intended to be taken for wetland purposes. And while the federal people would suggest that they only control 700 thousand acres, in fact they control 3 or 4 million acres.

That is an extremely sensitive issue and that's why I emphasize that delineation is extremely important. We have received outstanding cooperation from the Interior at this point in recognizing the problem and at least taking some initial steps towards resolving it but any future legislation of Congress should take this into consideration because it simply would deny cooperation of land owners in any program.

Mr. BUTERBAUGH. Senator, may I comment? I'm Galen Buterbaugh. To work out procedures where we will be delineating the wetlands, pre-1976 wetlands are the ones where we are talking about where there was no maps made or provided prior to 1976. All wetland easements after 1976 have a map but prior to 1976 did not, and I think we are reaching, I think we are close to reaching an accord on that process so we'll be setting up a pilot program in North Dakota to delineate wetlands where the land owners come forward and accept that process.

Governor OLSON. We do appreciate that.

Senator CHAFEE. Could you just touch a little bit more on your first point which is incentives rather than disincentives? I wasn't sure I followed that completely.

Governor OLSON. Well, it's a general proposition, Senator.

Instead of penalties for not complying with the law, it would be much better if we had incentives to participate and cooperate in a program. It's a general proposition and general observation and we would be pleased to offer specifics if we have some idea of the framework of the thinking of the committee. But I have expressed it this way before, Senator, and I think this would apply to South Dakota landowners and producers here concerned with the issue is that we'll raise ducks, we'll preserve wetlands, we'll raise wheat, and we'll raise sunflowers, but we would like to be or need to be paid. It's expensive to farm in this part of the country in the Great Plains and dry land farming and we need to be compensated for the work that goes into feeding ducks and we wouldn't mind preserving wetlands.

That's the general framework which I make that observation if there are incentives rather than well, we'll politely call them disincentives or penalties or punishment for not complying, it would be much preferable out in the prairies. Any observation, Dale?

Mr. HENEGAR. That's essentially correct.

Senator CHAFEE. Thank you very much, Governor, for the trouble you took in coming down and others may have questions, but I want to thank you. I'll stay in touch with you on this because you have given us a lot of thought and we look to your continued input.

Senator ABDNOR. I too, want to commend you for that excellent statement. I'd like to associate myself with those remarks you made.

Governor, do you know of any area in the United States that is more reliant on property taxes and land taxes for their economy on both the local and country levels than ours? The point I want to try to impress upon Senator Chafee and all, every acre that is taken off the tax roll triples States like ours more than any State in the Nation.

Governor OLSON. I would say that's probably true, Senator. We have a sparse, widely distributed population. Some of the counties may have 3, 4, or 6,000 people in them with a large space to administer and provide State and local services so if we take a few hundred acres off the property tax rolls it becomes quite significant to the process and the way that we provide services.

I would agree with you Senator Abdnor. I can't imagine any other area in the country that is more sensitive to change in property tax structures.

Senator ABDNOR. I keep coming back to this because between us we have lost well over 1 million acres to water development, which is fine. But both of our States, for the most part, have not received one nickel's worth of real benefit and dollar value from this.

Governor OLSON. I had five or six sermons on that subject and I'll share it with you sometime.

Senator CHAFEE. We are concerned that the commitment on lieu tax payments have not been made. That's another one of the many, many factors that provide for unrest in the pothole region of the country in these programs.

Senator ABDNOR. Thank you, Governor.

Governor OLSON. Thank you, Senator.

Senator ABDNOR. Let me say, Governor Janklow did want to be here today, but couldn't make it. He's well represented by the Secretary of the South Dakota Game, Fish and Parks Department, Jack Merwin, and Jack, would you care to come forward?

Mr. MERWIN. Thank you.

Senator ABDNOR. I think each time you better give your name for the record so the reporter will have it.

STATEMENT OF JACK MERWIN, SECRETARY, SOUTH DAKOTA GAME, FISH, AND PARKS DEPARTMENT

Mr. MERWIN. My name is Jack Merwin and I'm the secretary of the South Dakota Game, Fish, and Parks Department.

First, I want to thank you, Senator Chafee and Senator Abdnor, for the invitation to testify at this hearing. I am especially grateful

that you have dedicated time in your busy schedules to come to Aberdeen, S. Dak., in the heart of the prairie pothole region, to obtain input from our citizens, landowners, administrators, and sportsmen on the important subject of wetlands conservation.

I know of no wildlife-related natural resource, other than wetlands and their associated values, that commands such a broad spectrum of interests. When so many are interested in a single resource there are bound to be conflicts and disagreements. Nevertheless, wetland preservation in South Dakota has enjoyed generally broad support from Governor Janklow, from the State legislature, from county commissions and from landowners. Indeed I suspect that many people here today will say they do not oppose preserving wetlands, but they do oppose certain aspects of the current program. There are, unfortunately, major differences in opinions among various interests on how wetland preservation should be accomplished.

We in South Dakota have a very strong interest in wetlands and waterfowl conservation. There are 49.3 million acres of land in the State and 1.3 million of those acres are wetlands. These are what remain of the original presettlement wetlands which have been estimated to have covered 2.5 million acres. Since 1950, over 250,000 wetland acres have been lost, both reasons enough to be concerned about preserving those wetlands that remain. Still, we are a major wetlands resources State and, by comparative standards, a vital factor when considering current and future waterfowl production. This is a fact that we clearly recognize and a responsibility that we accept. However, for us to accept this responsibility we must insist that the Federal Government also recognize and accept its responsibilities. To be specific, the Federal Government should not ask South Dakota to make this contribution toward an important national goal at the social and economic expense of the State. This, Mr. Chairman, will be the major thrust of my testimony before you today. We want to contribute, we are willing to contribute, but we are not willing and do not want to contribute a disproportionate share of the costs.

Since enactment of the Wetlands Loan Act of 1961, the U.S. Fish and Wildlife Service has acquired 92,214 wetland acres in fee title for which South Dakota landowners were paid \$12.7 million. The Fish and Wildlife Service has also purchased easements on 356,411 wetland acres and paid 6,610 landowners \$15.2 million not to drain, burn, or fill those marshes. These figures do not include almost 40,000 acres in five national wildlife refuges also located in South Dakota. Further, it is our understanding that the Fish and Wildlife Service goals for wetland preservation in South Dakota, established in the late 1950's, would require that 85,000 acres of fee title and 200,000 acres of easement wetlands still need to be acquired. The South Dakota Department of Game, Fish and Parks owns in fee title 142,000 acres of wildlife lands of which about 54,000 acres are marsh and water. Federal and State acres of wildlife lands now total about 630,000 acres. If the 285,000 acres still needed to meet the original wetland preservation goal is achieved, there would be over 900,000 acres of South Dakota dedicated to wildlife with emphasis on waterfowl conservation. This would amount to 2 percent of our total lands in the State. Although this may seem like a

small percentage, it should be remembered that these wetlands are concentrated in the eastern half of the State which is also the most intensely farmed.

To add some perspective to these figures, South Dakota wetlands are producing up to 4 million ducks annually and hosting about 13 million ducks during the fall migration, yet only about 150,000 of them are being harvested by South Dakota hunters. South Dakota ranks second, and North Dakota first, in waterfowl production and 27th in waterfowl harvest. Anyway you look at it, this is a significant contribution to the Nation's wetland and waterfowl conservation program.

Realizing that many of these waterfowl acres have the potential of being converted to agriculture uses, the conclusion must be that South Dakota is making an economic sacrifice to continue its contribution toward the waterfowl production goals of our Nation. For this reason we believe any legislation to continue wetlands conservation should be designed to compensate for these economic impacts on local county governments and the State economy as a whole. Specifically, we do not think South Dakota should have to provide matching funds for acquisition and we believe county tax revenues should not be diminished to support a national objective program. These hundreds of thousands of acres being withheld from agricultural production have real economic value and this should be so recognized by the Federal Government in its wetland protection program.

We have carefully followed the development of legislation to extend the Wetlands Loan Act. Secretary of Interior James Watt took initial and commendable action when he established his Protect Our Wetland and Duck Resources [POWDR] Task Force last summer and submitted the text of S. 978 and H.R. 2268. Governor Janklow, in his comments to Senator Abdnor on the POWDR bill supported the basic intention to extend the Wetlands Loan Act and to improve wetland preservation funding methods. He went on, however, to point out that the draft legislation did not address the wetland preservation problems and needs in prairie States like South Dakota. Further, the POWDR bill put extreme emphasis on increased State involvement in wetland acquisition, a proposal that South Dakota, at least will not embrace with enthusiasm.

We have studied the proposed Emergency Wetland Conservation Act (S. 1329), and H.R. 3082 introduced by Representative Forsythe. We conclude these bills have strengths and weaknesses similar to the POWDR bill but has greatly improved on the concepts of mapping and identifying the wetland resources and utilizing the Land and Water Conservation Fund for Federal acquisition.

None of the wetland bills, however, address the in lieu of tax payments and none of the testimony we have read addresses this concern. Governor Janklow discussed the critical importance of in lieu of tax payments to county governments in his comments on the POWDR bill. Before 1976, county governments received 100 percent of the amount owed them. After 1976, only once, in 1980, was a full payment made. From 1976 through 1982 the payments ranged from 52 percent to 100 percent with an average of 79 percent. This underpayment has been an impediment to local county support of wetlands preservation. An accelerated wetlands acqui-

sion program beyond September 30, 1983, should be designed to avoid this unnecessary antagonism of local government. We would recommend revisions of the proposed Emergency Wetlands Resources Act of 1983 to provide assured in lieu of tax payments to counties, with the formula for calculating the annual payment to be adjusted from three-fourths of 1 percent to a full 1 percent of the adjusted cost of the land.

There are other weaknesses in the current wetlands preservation program that are not resolved by any of the proposed bills; they are wetlands preservation versus water development, or the mitigation issue, and the opposition to perpetual easements. We in the prairie pothole region believe conflicts between water development and wetland preservation can be reduced by seeking ways for the Federal water projects to enhance, restore, improve or create new wetlands without need for excessive land acquisition to replace wetlands destroyed by these projects. We believe that this concept can be refined and implemented to eliminate simultaneous competition to acquire lands by the Fish and Wildlife Service, by the states and by water projects. We have improved our resource management skills substantially over the last 30 years and it is possible that we could maintain or even increase waterfowl populations with less acquisition and more development and management of now publically owned wetlands.

We support most of the provisions in the Emergency Wetlands Resources Act of 1983. One major exception is the Land and Water Conservation Fund matching fund apportionment formula. The bills provide up to \$50 million annually to be made available to states on a three to one ratio. The clinker is that the states' share will be based upon how much of their own funds was spent on wetlands acquisition a year earlier. States would participate in the fund by implementing certain segments of their Fish and Wildlife Service approved Comprehensive Plan, which only four states have, or by submitting each acquisition proposal to the Fish and Wildlife Service for approval. Even after the paperwork is completed there is no assurance the money will be there; it may have already been obligated or it may never have been appropriated. Many states will have to start from scratch with such things as comprehensive plans, legislative authority to acquire wetlands, and establishing an acquisition budget history. If the South Dakota Game, Fish and Parks Department participates in such an acquisition program we must first pay $\frac{1}{4}$ of the initial cost to achieve the national wetland preservation objective in our state and then forever pay the annual property taxes. We believe we have already contributed adequate funds and dedicated valuable lands to this national objective.

We would prefer to see the Emergency Wetlands Resources Act put more emphasis on rejuvenating the Federal wetland acquisition program. The Fish and Wildlife Service [FWS] currently has an adequate acquisition program structure in place, they have established priorities and goals, and they would not need to prepare comprehensive plans or extensive acquisition proposals as required of the States by title III. We suggest that \$25 million of the \$50 million of the Land and Water Conservation Fund proposed apportionment for states, be made available to the Fish and Wildlife Service until such time as the wetland goals in the prairie pothole

states have been met. This amount, combined with the expanded Migratory Bird Conservation Fund provided by these bills will allow the Fish and Wildlife Service to launch a more acceptable and accelerated wetland acquisition program. This funding scheme will still leave \$25 million to be apportioned to States annually.

After wetlands have been acquired, either in fee title or by perpetual easement, they must be maintained and often could even be improved. We believe these wetlands can be economically managed by the states. State management of federally acquired wetlands and State-owned wetlands, using the Land and Water Conservation Fund direct non-matching grants, may be a better alternative than placing the heavy emphasis on State acquisition that these bills propose. We recommend S. 1329 be amended to authorize the use of Land and Water Conservation Fund apportionments to manage and improve fee title wetlands, easement wetlands, and other publicly owned wetlands, as well as provide for their acquisition.

The biological value of wetland easements has been questioned, mainly because of a lack of adjacent upland nesting cover and predator control to support waterfowl production. Easements are also criticized because subsequent landowners are often not aware of the easement encumbrance until they have already violated the terms of the easement. We believe that the perpetual easement program is an important wetland preservation alternative and should be retained. However, the biological values and the landowner's acceptance of easements can be greatly improved if the landowner could realize some annual income from them. We recommend S. 1329 be amended to authorize compensation from the Land and Water Conservation Fund apportionment to landowners for developing and maintaining upland habitat adjacent to the easement. We further recommend easement payment methods be studied to determine the feasibility of partial down payments with the remainder placed in trust to provide perpetual annual payments to the current owners and subsequent owners.

Before closing, Mr. Chairman, I would like to add a few words about the unique relationship between waterfowl production and the economy of our State. As you may know, South Dakota is the most agriculturally dependent State in the Union. Approximately 20 percent of our personal income is earned by farm proprietors and laborers. The national average is 3 percent and a very strong agriculture State such as Iowa averages approximately 11 percent. This agricultural economy which is largely livestock based, is extremely dependent upon and sensitive to the amount of precipitation which falls in South Dakota and the livestock feed thereby produced. During drought years our State has had to liquidate as much as 27 percent of its total cattle herd and 36 percent of its breeding cows due to a lack of feed. This reduction in agriculture production in South Dakota and its effects on our economy were felt during the 1970's. Many elderly farmers in our State maintain that even during the 1930's, South Dakota was not so severely affected by dry weather. One of the reasons for this severe affect, of course, is the fact that South Dakota has 530,000 acres of land lying under the four main stem reservoirs constructed on the Missouri River in our State. These lands were a mixture of cropland, pastureland, and woodland which provided both sustained feed and

shelter for a sizeable segment of our livestock population. This resource as it benefits agricultural production and the associated wildlife resources that went along with it have been lost to the State of South Dakota forever. We ask you to realize, Mr. Chairman, that neither of those losses have been mitigated.

Our State feels very strongly that the answer to this dilemma in South Dakota is a continuation of the Federal reclamation program to compensate our economy for the annual loss of agriculture production and economic activity suffered by the inundation of 530,000 acres of land. The wildlife habitat losses associated with these reservoirs also should be mitigated in a manner that is both biologically and socially acceptable to South Dakota.

It is not enough to say that the individual owners of that land were compensated. Compensating them did not create more land in South Dakota and the taking has permanently injured the ability of our economy to support the citizens of our State. As you have seen from my testimony here today, this State is a strong supporter of the wetland protection program and believes wholeheartedly in preserving wildlife for future generations. On the other hand, when our State slips to 47th in the Nation in per capita income because of the instability of its agriculture economy, we often feel that our contributions toward the important goals of downstream flood protection and national waterfowl production are imposed at a far too disproportionate cost to South Dakota.

We want to produce ducks, and we want the rest of the Nation to be able to enjoy that wildlife resource. South Dakotans, however, also want to be wealthy enough to enjoy that resource to the same extent that the rest of the Nation is being benefited by it. We truly believe that continued water development for the benefit for all of our State is a debt owed to South Dakota by our Nation and that sound projects for the irrigation of our lands can be done in a manner that is compatible with the preservation and development of our wildlife resources. It is our feeling that much of the sentiment against water projects currently popular in Congress has no relationship to the reality of what is going on in South Dakota.

Mr. Chairman, as you have visited our State this week you have observed areas of unusually abundant rainfall, and yesterday on the aerial tour an area suffering the effects of inadequate rainfall. Drought in South Dakota occurs all too frequently and impacts our economy severely. Please remember that South Dakota is not always so green and that South Dakotans, too, should be allowed the same opportunity to develop their economic base as was afforded the residents of other regions of this country years ago. We believe and can prove, if given the chance, that economic development through the wise use of our water resources can be and will be compatible with the goal of preserving and enhancing our wetland resources all to the benefit of this great country of ours.

Your consideration of our comments and any effort to accommodate our suggestions will be a positive step toward preserving waterfowl and their habitat in the prairie pothole region.

Thank you, Senator Chafee and Senator Abdnor, for the opportunity to appear and testify on this important subject.

Senator CHAFEE. Thank you very much, Mr. Merwin, and I want to thank you both for the courtesy you have extended to me yester-

day and the excellent statement which has a lot of meat in it and I would hope that you would leave a copy of that with us.

Mr. MERWIN. I certainly will.

Senator CHAFEE. I think one of the points you made which we should bear in mind and I'll talk with Galen about this later, is further improvement on the land that we already have. Yesterday when we flew over we saw some of the lands that have been left for the wildlife so they would be safe from predators and it seems to me you are talking about doing better than what the Federal Government already has done and I think that's a good point. We will be looking into that obviously.

With 142,000 acres under your jurisdiction to have shown concern for this matter by doing what you have. I wonder if you think there is much merit in that. And that is that this is just a wildlife effort, that preserving the prairie potholes and the marshland is connected with the preservation of water overall, for the water table, for prevention of floods, but that may not be a problem right at this immediate area. I look on it not solely as a wildlife proposition, but going further. Do you see merit in that?

Mr. MERWIN. Yes, most certainly I do. There have been a number of studies that would indicate the general overall environmental value of the wetlands so their values are not limited only to waterfowl production but my comments were in the context of the purposes of the bill which is to stabilize and improve to the extent possible, waterfowl production in our Nation.

Senator CHAFEE. Thank you very much. We appreciate the opportunity to have you here.

Senator ABDNOR. Thank you.

Mr. MERWIN. Thank you, Senators.

Senator ABDNOR. We have a large number of witnesses who have asked to testify. I think I want all to realize we have to work toward brevity here because Senator Chafee has other hearings and other meetings yet tonight and will be leaving early this afternoon. We want to accommodate as many as we can, but to do so will require people being brief and summarizing their statements. Every statement will be made a part of the official record and that's the important thing.

We have received numerous statements from people who couldn't attend and they will be made a part of the record. With that in mind, as our witnesses come forward, a reminder that in order to give everyone an opportunity to be heard who requested it, we are going to go as far as we can on the witness list but you all have to be as brief as possible.

We'll start with our first panel, Ray Linder of the South Dakota State University in Brookings, who is the director of the Cooperative Wildlife Research Unit, and the statement from Mr. Keith Harman who is a member of the Wildlife Management Institute. Will both of them come forward at this time? I might ask that each witness introduce themselves so we have your name properly on the record. Gentlemen, we welcome you to this meeting.

STATEMENT OF RAY L. LINDER, LEADER, SOUTH DAKOTA COOPERATIVE WILDLIFE RESEARCH UNIT, SOUTH DAKOTA STATE UNIVERSITY

Dr. LINDER. Thank you, Senator. My name is Dr. Raymond L. Linder. I want to report on some of the research we have done at the South Dakota Cooperative Wildlife Research Unit concerning wetland values. I will not go into detail as to the value for waterfowl and wildlife because we all know that. But we have done studies there.

I'll emphasize this point and in one study we found that 38 species of the birds other than waterfowl used 8 wetlands to nest in in 1980 and 1981. In 1973 in a survey of breeding ducks in South Dakota we found there were 1 million pairs of breeding ducks in the state. Over 80 percent of those were in the eastern part of the Prairie Pothole Region and these are breeding pairs that are mating in early June. Our studies as well as many others show the importance of the great diversity of the wetlands from the very smallest to the largest.

Waterfowl, for example, when they migrate early in the spring, the first waters to warm are the very small shallow wetlands and that is where the food is produced that is necessary for them to maintain the breeding condition and lay eggs and later in the year they must use more permanent water for the broods and so forth.

Our studies show the importance of the wetland cover for pheasants over the winter, to deer, to many other species of wildlife.

We have some studies on other aspects besides wildlife. We completed a survey of use of six wetlands in eastern South Dakota in 1982. And over 10,000 people made almost 5,000 trips and spent 63,000 hours on those six wetlands from August of 1981 to August of 1982. Ninety percent of those visits were for hunting. But the wetlands were also used for trapping and there were 17 nonconsumptive uses measured, that is activities as birdwatching, snowmobiling, photography, and canoeing and that type.

On another study of recreation use a questionnaire was mailed to 1 percent of the resident 1982 fish and game license holders in each county of the State. Of the residents who hunted in 1982, 82 percent or about 120,000 South Dakotans used wetlands at least once during the season, and they averaged 20 days per hunter. This expanded in almost 2.5 million man-days of wetland use by South Dakota hunters in 1982. The estimated expenditure per hunter was \$206 in 1982 or a total direct expenditure of \$24 million of wetland related hunting. Preliminary analysis indicates a value, discounted at 7.85 percent, of \$338 per wetland acre for hunting alone. This does not include a nonresident hunter input.

Another study I want to mention is one we carried out on a 1,550 acre tract of public land in Roberts and Grant counties, about 75 miles east. We measured surface area of the 212 small wetlands on that area and volume of water they contained after the spring snowmelt in April of 1982. These wetlands averaged 0.7 of surface area. We did not measure any larger than 7 acres. These 212 small wetlands contained 158 acre/feet of water or over 50 million gallons. It seems logical that these small wetlands reduced down-

stream flooding and potential for downstream flow and potential flooding.

Another aspect of these small wetlands on that land is important for ground water recharge. Modeling studies and observational studies have shown that in the relatively impervious glacial till deposits of the Prairie Pothole Region, precipitation rarely percolates to the water table on upland sites, but filtrates to the water table only where water is ponded on the soil.

Trapping for fur bearers is another important resource to the economy of South Dakota. South Dakota fur buyers paid \$2.4 million to South Dakota trappers in the 1980-81 season. Furs sold to out-of-State dealers were not included. Much of this return was to the landowner trapping on his own property.

I want to conclude by saying there are some tremendous values demonstrated by our research, to the economy and to the people of South Dakota for now and the future. And furthermore, that diversity of wetlands that occurs out there is also important. I thank you, Senator Chafee, and Senator Abdnor.

Senator ABDNOR. Thank you. Mr. Harmon?

Mr. HARMON. Senator Chafee and Senator Abdnor, I'll try to keep my remarks brief. I'll leave printed copies of my testimony.

Senator ABDNOR. Your statement will be made a part of the record I assure you.

**STATEMENT OF KEITH W. HARMON, NORTH CENTRAL FIELD
REPRESENTATIVE, WILDLIFE MANAGEMENT INSTITUTE**

Mr. HARMON. My name is Keith Harmon and I'm the northcentral representative for the Wildlife Management Institute, and at the present time I live in Nebraska, and the northcentral region for which I'm responsible includes the States of Minnesota, North Dakota and South Dakota. Two of those States in the past I have lived in.

In the Prairie Pothole Region the economic system under which we operate insures that it is economically profitable for the landowner to drain wetlands. And another important fact is that the U.S. Fish and Wildlife Service's small wetland program is the only alternative available in the prairie, and has been for more than 20 years.

One might argue that the States can protect wetlands. Unfortunately, the record is clear that State government has never assumed this responsibility. When national wetland goals were established in the mid-1950's and the State's share was 4.5 million acres of which they already controlled 2 million acres, as a State goal for national wetland protection. As nearly as can be determined, the State have collectively acquired only 17 percent of their 2.5 million acre obligation during the past 20 years. And at the present rate, we might optimistically expect the States to fulfill their wetland acreage goal in about 629 years. South Dakota and North Dakota may take just a little bit longer than that.

On the other hand, State funding is routinely made available for drainage projects, and one case in point is the State of North Dakota. North Dakota, in its State water plan, proposes to construct 212 miles of channelization in the Devils Lake Basin at an

estimated State cost of nearly \$29 million. At stake in this proposal are more than 400,000 acres of wetlands. North Dakota, who has repeatedly attempted to halt the Federal wetland program and has since 1977, suggests in the State water plan that incentives for wetland protection be provided by the Federal and State water bank programs rather than the Fish and Wildlife Service's program.

In reality, this is similar to no program at all. The Federal Water Bank program between 1972 and 1979 averaged 28,000 acres of wetlands under contract in North Dakota at an average annual cost of \$340,000. This is just 7 percent of the wetland acres that could be drained by 212 miles of State financed ditches in the Devils Lake Basin. As for the more recently authorized State water bank, the mathematics are much easier. To date, since that water bank program has been engaged by the legislature there's not been a single dime appropriated or a single wetland acre protected, nor is there likely to be.

Some contend that the Fish and Wildlife Service's wetland program has hindered full economic development in the Prairie Pothole States. Collectively Minnesota and the Dakotas encompass 148 million acres of which approximately 111 million acres are cropland or tame-grass pasture. The Service's goal of 2.4 million acres in those three States would involve 1.6 percent of the total land area, most of which is not cropland. Interestingly enough, preliminary figures for USDA's payment-in-kind program show over 15 million acres of wheat and feed grain land out of production in 1983 in Minnesota and the Dakotas, nearly six times the amount of land proposed for wetland protection. These figures hardly support the contention that some have the objective of declaring the Prairie Pothole States a wildlife preserve.

Likewise, I believe that the contention that wetland protection keeps the States in the category of lowest per capita income is not defensible. In fact there are other economic measures that need to be considered. For example, while having a low per capita income, North Dakota also has the highest number of millionaires per capita of any State. As a personal aside, my father-in-law is a retired dry-land farmer from Waubay, S. Dak. They maintain a summer lake home in South Dakota and a winter home in Arizona. During this past year they made several trips to Mexico, spent 3 weeks in Hawaii, and are leaving for a month in Europe before returning to Arizona for the Winter. My father retired after 40 years in the Gary, Ind. steel mills, an area of high per capita income, with a modest pension and social security and has no financial resources for spending winters in a warmer climate or foreign travel.

As a concluding point, the Fish and Wildlife Service's wetland has been criticized for causing problems in the Garrison and Oahe irrigation projects. This may or may not be the case. But by law the Fish and Wildlife Service and the State fish and wildlife agencies must determine the wildlife losses and make recommendations for mitigation. The construction agency, in this case the Bureau of Reclamation, also by law, is free to select those recommendations which they decide are feasible. Congress then accepts the construction agency's plan with or without mitigation. The Service only recommends, it is not their mitigation. It is mitigation directed by Congress to be carried out by the Bureau of Reclamation. Also,

that mitigation has no relationship to the Service's small wetland program, either now or in the past.

In closing, the Wildlife Management Institute supports fully the small wetland program and its extension with expanded funding. I believe that listening to only one side gives the impression of widespread opposition. The other side is that, during the 20 plus years the program has been operating in this three State area, 19,782 landowners have voluntarily entered into easement agreements to protect wetlands. Equally important is the fact that even today another 4-500 sign such agreements each year. In North Dakota, where the State has stalled the program for 6 years, there is a list of more than 100 landowners asking to be made an offer. The institute believes that this is the true measure of the programs acceptability. It is by this standard, sound, acceptable and the only alternative to drainage.

Senator CHAFEE. Thank you very much, gentlemen. I appreciate your testimony. I was particularly interested in the point that Dr. Linder made, that dealing with the ground water that apparently—and I'm no expert in this, but I'm trusting your judgment—that rain, if not held, flows away and does not get to the ground water whereas if you have a pond of some type, a pothole, whatever it is, in the holding process then it does have time to get down in the ground table which I think is important.

Dr. LINDER. I think it's important and I'm not a hydrologist, but following their papers they have published and I have mentioned those in the testimony what that is based on. I think it's quite well accepted.

Senator CHAFEE. Thank you both, gentlemen.

Senator ABDNOR. What business are you in, Mr. Harmon?

Keith HARMON. I'm a professional wildlife biologist.

Senator ABDNOR. I was interested, and I'm afraid the record may show we are probably the wealthiest State in the Nation, in listening to your testimony. I seriously suggest you go out and visit with some of the farmers and you will find out they are trying to make ends meet. I guess not all are as fortunate as your father-in-law. We have a few of them but I can show you reams of letters illustrating how we are trying to keep some of these people in business right now. Putting testimony in the record that suggests to Chairman Chafee that all of our people out here are very wealthy and have nothing to be concerned of is most unfortunate and I hope the record will show otherwise.

I think our per capita income clearly shows how wealthy we are around here and the problems we have. Mr. Merwin said we are the most agricultural State in the Nation. Farmers are making it and doing well and I must have been hearing from the wrong people for quite some time then. I'm sorry, the one thing we need to do is build better relations between the farmers and these programs. It doesn't always help with testimony like that. But thank you anyway.

Our next witness is Mr. Mike Held of the South Dakota Farm Bureau, and Mr. Harvey Faulstich of the South Dakota Farmers Union.

STATEMENT OF MICHAEL HELD, ADMINISTRATIVE DIRECTOR,
SOUTH DAKOTA FARM BUREAU FEDERATION

Mr. HELD. Thank you very much Senator Chafee and Senator Abdnor. My name is Michael Held and I represent the 6,500 farm and ranch families who are members of the South Dakota Farm Bureau. Farmers and ranchers are the owners and caretakers for a majority of the land in this State and Nation, and, therefore, are keenly interested in the subject matter before us.

I wish to comment on several subject areas. First, the on-going prospect of additional wetland acquisitions by the Federal Government. Providing nesting and stopover areas for the Nation's waterfowl is a nice idea and probably an appropriate function of Government. However, the Farm Bureau members feel that the acres of wetlands presently under Government control through ownership or leasing is sufficient and Farm Bureau opposes the acquisition of additional lands. We would suggest and instead encourage improved management on lands already in the wetlands programs.

Farm Bureau members are alarmed at the amount of land presently in Government ownership and control, by all sorts of programs. Attempts by the Federal Government to control the use of wetlands, many times has resulted in undermining farmers' and ranchers' ability to operate their farms as they best see fit and also affects their ability to make a living.

Farm Bureau members are alarmed at the amount of land presently in Government ownership and control, by all sorts of programs. Attempts by the Federal Government to control the use of wetlands, many times has resulted in undermining farmers' and ranchers' ability to operate their farms as they best see fit and also affects their ability to make a living.

Farm Bureau is opposed to numerous sections of the Protect our Wetlands and Duck Resources Act of 1983, and I'd just briefly like to list a couple of them.

First of all we are opposed because it expands the number of acres of wetlands. We feel that titles II and III of that act should be deleted as they now stand.

Second, some sections are very vague and ambiguous and we think would cause some serious problems for landowners for the Federal Government. Problems that could only probably be resolved in a court of law. And, we would support some of those changes that would be needed to clean up the land.

Third, wetlands inducted into the program would lose their resale value and owners would lose the right to use the land but have all the other responsibilities that are connected with land ownership, and;

Fourth, land values adjacent to wetlands would decrease because of the use of regulations that are contained in the legislation.

Another area of major concern to our members is the perpetual term of wildlife easements. This causes problems in a number of areas, and I would just like to list a couple of them.

First of all, decreased land values. Potential buyers are always wary of purchasing property that has an easement on it. An easement with a perpetual term causes obviously double jeopardy.

Second, estate settlement. Sale of estate property with a perpetual easement is at best, difficult. This causes difficulties for heirs who in most cases were not involved in granting the easement.

Third, we would suggest that land uses do change. Over time, the best use of land often changes. Perpetual easements ignore the fact that land uses do change over 20 to 50 year periods.

In our opinion, wildlife easement terms should be returned to 20 year basis as was the case prior to the rule change to perpetuity.

We would also say that any wetland acquisition program must use the willing seller concept as one of its foundations. Also, assurance of payment in lieu of taxes to local governments is another concept necessary in wetland acquisition programs.

In conclusion, Farm Bureau would say that a delicate balance must be met. Many times in the past, private property rights and best management practices for the land have been sacrificed. We encourage Congress and this committee to recognize some of the past mistakes and correct the situation in the best interests of all citizens concerned. Thank you.

Senator ABDNOR. Thank you.

STATEMENT OF HARVEY FAULSTICH, MEMBER, BOARD OF DIRECTORS, SOUTH DAKOTA FARMERS UNION

Mr. FAULSTICH. Senator Chafee and Senator Abdnor, my name is Harvey Faulstich. I am a member of the board of directors of the South Dakota Farmers Union and chairman of District VII Farmers Union, which includes the counties of northcentral South Dakota. My wife and I own a farm near Orient, South Dakota in northern Hand County.

I would like to thank the chairman and the members of the Senate Subcommittee on Environmental Pollution for scheduling this hearing in South Dakota. I know that I speak for all of the members of our organization in expressing our appreciation for the opportunity to testify here today.

The members of the South Dakota Farmers Union are strongly in support of efforts to preserve wildlife populations in our State. As stewards of our farm and ranch lands, we recognize the importance of proper care for the land to assure the preservation of adequate wildlife populations for the future generations. However, we feel that these important goals could be better furthered by change in Federal law and policies regarding the acquisition or private lands for waterfowl production.

Delegates attending our 1982 South Dakota Farmers Union State convention adopted the following policy statements:

We urge the halt to land acquisition by condemnation for replacement of land lost to any water development process.

We oppose the acquisition of productive farmland to extend wildlife habitat. The arbitrary designation of farm units for wildlife mitigation without negotiation with a willing farm operator is disruptive and destructive to the efficiency of family farm management. Land to extend wildlife habitat should be acquired only by short-term lease or rental contract.

Federal and State government lands should be required to pay an amount of in-lieu of taxes equal to real estate taxes paid on similar private lands in each country.

As these policy statements indicate, the Farmers Union is strongly opposed to both Federal purchase of land for wildlife mitigation and to the acquisition of perpetual leases.

During the past 40 years, the Farmers Union has been a strong supporter of proposals to utilize water from the Missouri River to irrigate our farmlands. As you know, these hopes and dreams are, as yet, unrealized. One of the primary reasons for this failure has been Federal policy with regard to wildlife mitigation. Justified fears and uncertainties surrounding the use of condemnation to acquire mitigation lands provide one of the major sources of opposition to the Oahe Irrigation project and continues to be a problem for other irrigation proposals.

I feel that many of the problems surrounding mitigation could be eliminated through a simple change in policy. Mitigation lands should be acquired only from the direct beneficiaries of irrigation projects—not from distant farmers and ranchers who are not participants in the projects and do not stand to benefit from them.

Further problems could be alleviated through the adoption of a short-term easement instead of the present perpetual easement. Perpetual easements generally have a negative impact on family agriculture and on family farm management. The existence of a perpetual easement of a farm makes that farm more difficult to sell and usually detracts from the value of the land. It also provides additional problems for the eventual purchaser who finds that his ability to make management decisions regarding the farm is severely limited. The adoption of a short-term easement of 10 to 15 years duration would be a major improvement in wildlife mitigation policy.

Federal wildlife mitigation policy does not have to be a hindrance to irrigation. It does not have to be a source of antagonism between farm and ranch operators and the Federal Government and sportsmen. We feel that the policy changes recommended by the Farmers Union could eliminate these programs.

Senator ABDNOR, as a comment I want to commend you on the work you are doing on water development and in the progress of water development in South Dakota, especially between Pierre and Huron and in that area. Thank you.

Senator ABDNOR. Thank you.

Senator CHAFFE. Thank you both very much, gentlemen, for those thoughts and we appreciate it. We appreciate you taking the time to come and be with us.

Senator ABDNOR. I assume that you two gentlemen are speaking for your organizations that represent, between you, a large majority of the farmers in South Dakota, is that correct?

Mr. HELD. Yes.

Senator ABDNOR. Thank you all very much.

Our next witnesses are Wynn Eakins of the Izaak Walton League of South Dakota, and Tom Stringer of the Izaak Walton League of Minnesota. Gentlemen, hi.

**STATEMENT OF WYNN EAKINS, GOVERNOR, REGION III, IZAAK
WALTON LEAGUE OF AMERICA**

Mr. EAKINS. I'm Wynn Eakins of Clear Lake, S. Dak., and I am currently the governor of region III of the Izaak Walton League and a director of the South Dakota division, and I will be speaking as a director of the South Dakota division.

I can eliminate an awful lot of my speech this morning, and anything over 3 minutes, cut me off, Jim.

The league welcomes this opportunity to support the extension of the Wetlands Loan Act and to express full support of S. 1329, recognizing that there will be administrative problems to get it under way and this testimony can affect some of that Emergency Wetlands Resources Act of 1983, introduced by Senator Chafee.

There are two facts that I think weren't brought out and as a reminder here from all the facts we heard here this morning, the contracts that have been issued so far in the State for wetland easements—I think Ray Linder said we had 356,411 acres, and 6,610 contracts to get those acres, so we do have 6,610 farms in South Dakota involved in it. The other thing is, of course, the wetlands aren't entirely lost to the farmer. They can harvest the hay and stuff during the low season drought time. And the recent figures in 1980 is 300,000 tons of hay was harvested from wetland easements in the State.

Senator CHAFFE. Could I just ask a question? What was the 600,000?

Mr. EAKINS. That was the number of contracts they had with farmers in the State for the 356,000 acres that Fish and Wildlife Service has.

Senator CHAFFE. You mean 6,000?

Mr. EAKINS. 6,610 contracts—

Senator CHAFFE. I thought you said 600,000.

Mr. EAKINS. 6,610 contract easements for the 356,000 acres you have, so there is some involving the farmers.

We support the 10-year extension of the Wetlands Act together with the proposals to accomplish the goals set forth in S. 1329. The proposed Emergency Wetlands Resources Act of 1983 we consider is forthright, thorough and acceptable as a means to reduce the continued loss of wetlands in these United States and within South Dakota.

I would like to close by saying I just spent 2 weeks in Rhode Island and I caught an awful lot of bluefish off of Block Island and I love your beaches very much south of Providence and it's a pleasure to be there.

Thank you, and Jim, it's a pleasure to be with you today.

Senator ABDNOR. Thank you.

**STATEMENT OF TOM STRINGER, REPRESENTING THE OTTER
CHAPTER, IZAAK WALTON LEAGUE**

Mr. STRINGER. I'm Tom Stringer of Fergus Falls, Minn., and I'm here representing the Otter Chapter of the Izaak Walton League. Our chapter membership is about 65 to 85 members in recent years. Our chapter has been very active and an advocate of aggressive wetland perservation in our prairie pothole region of the west-

central area of Minnesota, which is the area where most of our members reside. And accordingly we have noticed losses of wetland in our area in spite of protection efforts by the U.S. Fish and Wildlife Service and the Minnesota Department of Natural Resources. We see this loss is continuing at a rapid rate and we fear that it will continue in the future unless we have more aggressive efforts made in our efforts to preserve wetlands.

I would like to take this opportunity to address the hearing issues as listed in Senator Abdnor's news release of July 15, 1983. These issues involve the pending legislation to increase wetland acquisition, increases in the price of duck stamps, admission fees for entry into Federal National Wildlife Refuges, perpetual easements and other wetland-related issues. We assume that additional issues might include a plan for additional legislation which would come separately and possibly later that might offer such things as tax benefits for wetland protection. Since most of these issues are addressed in Senate bill 1329 introduced by Senator Chafee, I would like to first comment on these points as they appear on the bill. Our Izaak Walton league chapter supports that bill with one exception.

First, we strongly support the concept of a continuation of the Federal wetland acquisition program. Section 101 of your Senate bill 1329 extends the Wetlands Loan Act for 10 years and forgives repayment of the loan. We wholeheartedly support extension of the Loan Act for the purpose of acquiring more wetlands. However, and this is our exception, we do feel that it is an obligation of the Fish and Wildlife Service eventually to repay the money used out of the general treasury for wetland acquisition. The original commitment which remains yet today was to repay the loan. We fear that forgiveness will simply provide opponents of wetlands preservation with a reason to oppose the legislation and future preservation efforts. Whether we are right or wrong about the local politics, we believe a commitment made ought to be kept.

The provisions made in section 201 are especially interesting because enactment of this legislation would add funds to the Migratory Bird Conservation Fund from the nonhunting segments of the public, as well as continuing the contribution by duck hunters who have supported the fund for years by purchase of their duck stamps. We're especially interested in the concept of requiring a valid duck stamp as an entrance permit into National Wildlife Refuges. Expanding the financial base of support for the Migratory Bird Conservation Fund we think is an excellent idea because the results would be, we hope, more wetlands protected.

Section 202 gradually increases the price of the duck stamp from the present \$7.50 to \$15 by the year 1988. In our judgment, the \$15 is probably a higher price than the market will bear and, in fact, this level of increase may not be necessary considering the provisions of section 201 previously mentioned.

I appreciate the POWDR bill makes the \$15 fee immediate or within the next year and we appreciate the gradual step up as provided for in section 202.

Another important provision of Senate bill 1329, in our judgment, is section 205, which directs the payment of \$75 million from the Land and Water Conservation Fund into the Migratory Bird

Conservation Fund each year for 10 years, the money to be jointly administered by the Federal Government and grants to the individual States. We feel the injection of this extra source of funding to wetlands acquisition will have a tremendous impact on both the quantity and quality of wetlands preserved for the future. We wholeheartedly support this concept of legislatively directing the use of the LWCF funds for wetland acquisition.

We heard some different opinions expressed on the issues of perpetual easements. I think in the heat of any kind of debate, however, it should be remembered that the vast majority of the private landowners who also hold wetlands easements on their properties do so with no objection to the terms of the easement contract. The test of the acceptance of perpetual easements is the presence or absence of willing sellers and up to this point, there has been no shortage of willing sellers for perpetual easements.

My final comment relates to a quote attributed to Senator Chafee in the July 15, 1983, Outdoor News Bulletin. Senator Chafee, you were quoted as saying that the bill you were promoting, Senate 1329, and I quote, "is only a piece of the puzzle and that Federal acquisition is but a part of the total plan and that other legislation would come later that would offer such things as tax benefits for wetland protection." We think that other legislation should take a close look at the conflicts between agriculture programs and wetland preservation efforts. Agriculture programs, whether coming from USDA policy or programs individually initiated by the private landowner, on the whole discourage the preservation of wetlands on private property. What must be found are incentives for private landowners not to drain wetlands. These incentives, as you've pointed out, can be in the form of tax benefits for wetland protection, but also could include the elimination of tax deductions and depreciation allowances for wetland drainage.

That concludes my comments. I thank you for the opportunity to appear before you today.

Senator ABDNOR. You're welcome. Wynn?

Mr. EAKINS. This morning a farmer came to my house about 4 o'clock. He had heard during the evening that I was coming up here to testify. At 4 o'clock this morning he wrote a personal note. There was no time to have it typed up. But I think it should go on the record. (See p. 323.)

My father lived on a farm during the thirties which had no sloughs and with the severe drought he had no feed for his cattle and horses.

I saw the value of the wetlands in 1976 when we had a severe drought in Deuel County. I cut my sloughs and potholes and baled 2,000 bales of hay off the wetlands which enabled me to keep my herd of stock cows. I had 100 acres of alfalfa and got only 200 bales off of it in 1976. I have a deep concern for the value of the wetlands for three reasons.

They provide feed for cattle during a drought.

They help keep our water table up, and recharge the ground aquifers.

They serve as a reservoir to hold water and prevent runoff during times of flooding. Drained wetlands have been the cause of much flood damage in years past. How many tax dollars have been

spent draining and the cost to taxpayers and the Government in disaster assistance? Back in the sixties I sold a wetland easement for my 480 acres in toto. Let's protect our wetlands and quit this draining. Everyone suffers.

Senator ABDNOR. For the record we should have the name of the gentleman that gave you the letter.

Mr. EAKINS. That was by William Stone, a farmer at Gary, S. Dak. That's all.

Senator CHAFEE. Thank you both, gentlemen. How many people come to your house at 4 o'clock in the morning?

Mr. EAKINS. That's when my girlfriends leave.

Senator CHAFEE. We appreciate your testimony. Both were very helpful.

Senator ABDNOR. Thank you. Wynn, just a moment.

Mr. BUTERBAUGH. I might just further comment on the statement made by Mr. Stringer. We have totally about 19,000 easements and he commented about the violation rate. On an annual basis we have between 100 and 200 violations by those 19,000 easements. So the percentage is very low. The vast majority of those, close to 90 percent, one phone call from our office bringing this to the attention of the farmer that he has done something to violate the easement usually gets it corrected. And so on an annual basis we feel with 10 to 20 out of 19,000 people or maybe less than 19,000, that actually end up in court or any further action. Very, very low percentage.

Senator ABDNOR. Thank you. Our next witnesses are Mr. Don Barber of the Lower James River Conservancy Subdistrict, Mr. Clair Bierschback of the South Dakota Association of Conservation Districts, and Mr. Pat Sieh of the Oahe Subdistrict. Will you all come forward? We welcome you gentlemen to the hearing. I know you have been waiting for an opportunity to testify and we appreciate your presence today. Why don't we start with the first on the list.

STATEMENT OF DON BARBER, LOWER JAMES RIVER CONSERVANCY SUBDISTRICT

Mr. BARBER. Senator Chafee, Senator Abdnor, I'm Don Barber of the Lower James Conservancy Subdistrict at Mitchell, S. Dak. I want to express my pleasure at being able to testify in South Dakota on the extension of the Wetlands Loan Act. I want to state for the record at the outset that the Lower James Subdistrict does not oppose preservation of wetlands.

It recognizes the value of the wetlands in any water development program and the Lower James is involved in water development. Our problem and the one I would like to address today is the extension of the features of the act that finances acquisition of wetlands through perpetual easements.

Our problem with perpetual easement is that they are in perpetuity and this is a long, long time. It involves well past the original landowner who stuck the money in his pocket and went to the bank. The following landowners may have different views and different plans on the land.

Probably the other area of the perpetual easements program is the administration of it. We have no problem with, like I say, with wetland preservation. Probably the easement program would be acceptable given reduction in the life of the easement and some realistic administration on local levels and so far away from Washington.

A case in point I think would be the way the 404 program worked out as laid on us several years ago in the original form was rigidly enforced and rigidly interpreted and very strictly administered as to be almost unworkable and now after a few years of operation in working with it, the 404 program is beginning to be workable and is not a problem for general water development that it used to be.

What I'm saying is we feel that the perpetual easement program, the administration of it in the local areas has been a complete frustration trying to get a handle on the extent of the program and ramifications of the 2 million acres that the Lower James Subdistrict claims and states that Fish and Wildlife has easements on in the State.

And at this time I would like to present the committee with the map, the atlas of the counties of eastern South Dakota on which we have mapped the extent of the wildlife acquisition program, easement program in South Dakota.

Senator CHAFEE. Thank you very much.

Mr. BARBER. I'd like to read excerpts from letters that have crossed my desk in 2 years that outline the frustrations that we have felt and encountered in dealing with Fish and Wildlife Service in trying to get a handle on the extent of the program in South Dakota. I won't mention the names, only the source of the letter by town.

The easements burn, drain and fill restrictions refer only to the wetland acres and do not place restrictions on the upland acres encompassed within the subdistrict land description. This letter comes out of Washington, D.C.

When waterfowl easements are acquired by the Service, the owners are prohibited from draining, burning, flooding or filling wetlands within the described lands. We consider only the wetlands to be effected although owners are prevented from digging a ditch or taking other actions on the upland portion to drain wetlands. Washington, D.C.

In news articles, in letters to the Lower James Conservancy manager, Don Barber, in discussions with Governor Janklow, and his staff, we have gone on record that the wetland easements applies only to wet acres and protects those acres from being drained, burned or filled. Pierre, South Dakota.

The easements create no burden on the land except that the landowners in their use of the land may do nothing to burn, drain or fill the wetlands as to disturb their natural state. Pierre, South Dakota.

You may want me to say that it's alright to shut off water to wetlands under easements or make a policy statement that we lay claim to a considerable control over vast drainage because we had the right to water in a 20 acre wetland. I will never say that because it isn't so. I believe Fish and Wildlife easements are entitled to the delivery of water down the natural drainages. I will stick to the fact that the only—only the acreage of the wetland easement is protected and encumbered by the easement contract. Pierre, South Dakota.

You asked what designations applied to the colored areas of the maps, after the 29,980 acres of wetlands are deducted. We do not have any designations for these areas. They are of no particular concern to us. In a discussion regarding wetlands we would probably use the terminology "wetlands and uplands", our easements cover the wetlands. Pierre, South Dakota.

It appears that you are developing some concern over how the Secretary's colored in various areas on the maps which your office has duplicated. I see no reason why

anyone should be concerned over a simple record keeping practice. It simply shows that the wetlands located on a particular legal description are covered by the easements. Pierre, South Dakota.

Some individuals feel the Service actually controls the 2 million acres of the land by easement in South Dakota, rather than approximately 325,000 acres which are carried on our official records. The difference is whether or not the full legal subdivision's tally as being unreasonable. Washington, D.C.

Although it may be a position of citizens against perpetual easements that the entire land description is under easements. I believe the wording of the easement documents state clearly for both layman and lawyer that it is only the wetlands that is under easement. Pierre, South Dakota.

Our policy is to eliminate from the descriptions as much area as possible and that does not contain wetlands. Washington, D.C.

Certainly the easement interferes with an owner's future rights to establish the draining. That's the intent of the easements and the payment made therefore. And I've got to say that was from the director of the Fish and Wildlife Service of Washington, D.C.

I'm assured that negotiators were instructed to provide complete and accurate information on the terms of easements to landowners. Washington, D.C.

Regarding my request for information on quantity of each type of wetlands in Miner County, the response, "We do not keep wetland information in the form in which you requested it. I am at a disadvantage in trying to provide you the information you request because it is not indicated what you would like to do with the facts!" Pierre, South Dakota.

I would like to recommend to this committee that the delineation of wetlands be carried out on easements in South Dakota at the earliest opportunity. Several requests made by this, my office, have resulted in no movement, only sympathy that we don't have the staff or the time or money. I understand that this is one of the provisions of the new legislation. I would like to see this carried out as a first order of business. We have no handle on how many acres of the wetlands we have in South Dakota, only the figures that were compiled as these land appraisers were purchasing easements and sometimes that got to be kind of a mad race.

I request that one thing we haven't heard here is from possibly—from enough landowners, and possibly—particularly the landowners that are buying land or own land and the second time around from a perpetual easement. I think these landowners could be classed as an endangered species also. I think they should be given entirely more consideration and this consideration should come we feel through more hearings such as this carried out in the State and in the county in which these acquisitions are occurring by the Fish and Wildlife Service and carried down to a more local level and see if we can't get the administration of these laws to come out of Washington and work down to a workable process in the State.

Like I say, we recognize the value of wetlands. Any farmer certainly does. I thank you for this opportunity to testify and if there is any questions I'm here to answer them.

Senator ABDNOR. Thank you Don.

STATEMENT OF PATRICK SIEH, DIRECTOR, OAHE SUBDISTRICT BOARD

Mr. SIEH. My name is Patrick Sieh. I'm a director on the Oahe Subdistrict Board. I'm representing rural Brown County. I farm and live by Bath, which my land lies right on the James River. We are right in the middle of harvest and it's kind of hard for a lot of farmers to get in here and testify today, but in talking to some of

them they had asked me to come in and make some statements for them.

Senator ABDNOR. Let me say one thing. All the statements will be made a part of the record. It isn't necessary that we go into them in detail, but if you have them so they can be marked.

Mr. SIEH. I'll be very brief.

Senator ABDNOR. We have to get the landowners in here to testify, and keep moving it along.

Mr. SIEH. I have four different points that I would like to make.

Senator ABDNOR. Go ahead.

Mr. SIEH. The first one is the wetland acquisition must be willing sellers. I think that's self-explanatory.

No. 2, our concerns about local taxes being lost. Today us farmers have enough burdens. In fact probably it's a good time to say it, but our farmers are not dying on the vine and I think if—I may be retiring here in about 2 or 3 years and that's not because I made a lot of money and retire to the lake, but retire to the poorhouse.

My third point is the perpetual easements. It's kind of hard for a—for instance my father sold some land for easements of our wetlands and now all of a sudden my son comes along and finds that there is an easement on the land that he cannot farm it or use it the way he would like to, I think this puts an untrue burden on the person that is going to come in the future generations.

No. 3 is that Senator Abdnor knows that one of the issues that killed the old Oahe project was mitigation problems. I would like to see any future land that is taken for wildlife easements be used or put into like sort of a kitty and used for later on when our water projects do come in existence and we are going to need some land for mitigation and you know, kind of bank or put in the banks so we won't have to go through the same bind that we did before. I'd like to say I'm a hunter and trapper and hunted all over the State of South Dakota. We have some of the best hunting that there is and I think a lot of that is because farmers took the time and planted trees and I think that the Game and Fish have done their part but I think that we have to take into consideration the farmers' rights and I think that these four points are very important and I hope you include them in the legislation that is going to be coming up. Thank you.

Senator ABDNOR. Thank you, Pat. I wasn't trying to shut you off. If you have statements from farmers they will be made a part of the record, in addition to what you have covered.

Mr. SIEH. I understand that.

Senator ABDNOR. Thank you.

STATEMENT OF CLAIRE BIRSCHBACH, CHAIRMAN, RECREATION AND WILDLIFE COMMITTEE, SOUTH DAKOTA ASSOCIATION OF CONSERVATION DISTRICTS

Mr. BIRSCHBACH. Senators, my name is Claire Bierschbach from Webster. I'm the chairman of the Recreation and Wildlife Committee of the South Dakota Association of Conservation Districts. I'm a farmer over in Day County.

Perpetual easements have been the subject of discussion for several years at the South Dakota Association State convention. Per-

petual is a long time. I don't think that we should put restrictions on our land that our children and grandchildren will have to live with. Farming methods and technology are changing so fast that it is hard to foresee what will happen in the next 10 or 20 years, say nothing about 50 or 60 years.

On June 20 I had a meeting in Huron and several of the people are here that were at the meeting, and the following is some of their comments that they made. This is short, but I just took down or the secretary took down the comments and these are some of the things that came out of our meeting.

This was started with an act of Congress as a 20-year contract, but the Department of the Interior changed the easements to perpetual duration. I think that we should go back to the 20-year life. The program should be explained to everyone, not just the landowner. In many cases an older landowner signed up without consulting with his children or heirs.

Sometimes easements on wetlands are purchased on just one side of a fence and due to several factors this may grant an implied easement on the other side of the fence; this causes hard feelings.

The sale of duck stamps was originally meant to be used to purchase wetlands, but the Department of the Interior received a loan and used that to buy easements and some wetlands in addition to stamp moneys.

Payments should be on more than just a one-time basis. Annually would be much better. Perhaps tie rate of payment to rate of taxes.

We need to get more people informed about this problem. So that's all I have to present this morning.

Senator ABDNOR. Thank you.

Senator CHAFEE. Thank you. This easement matter, obviously, is one of deep concern and I think that is the thread going through the witnesses as we go along here. I appreciate having your thoughts on that.

Mr. BIRSCHBACH. It sounds like repetition of what was said before.

Senator CHAFEE. It may be emphasis.

Senator ABDNOR. I'm sure that this is one of the real thorns that's been a subject of the State legislature for some time. Is it true the perpetual easements started out as a 20 year deal?

Mr. BUTERBAUGH. Originally they were back in the 1960's. There were 2,000. I don't know how many there were. Does anybody have a figure?

Mr. TURNER. There were 39 in the State of South Dakota.

Mr. BUTERBAUGH. Thirty-nine?

Mr. TURNER. Easement contracts for 20 years.

Mr. BUTERBAUGH. And they are all coming due about now?

Mr. TURNER. They have all expired.

Mr. BUTERBAUGH. They have all expired. Alright. And then the program switched to perpetual easements back in the early 1960's and has been ever since.

Senator ABDNOR. Are they all going to be dropped?

Mr. BUTERBAUGH. I believe in all of the 39, none of them are going to renew.

Mr. TURNER. There were approximately 10 that were renewed.

Senator ABDNOR. Will you stand up and give your name for the record?

Mr. TURNER. My name is Jim Turner and I'm acquisition supervisor for the Fish and Wildlife Services in Aberdeen, S. Dak. And there were 39 easement contracts negotiated in the early 1960's. These were renegotiated and I believe there were about a 27-percent success of renegotiated on the short term contracts, so in actuality the success in preserving wetlands for a substantial amount of time was lost because of the fact that many landowners did not wish to re-sign into the program.

Mr. BUTERBAUGH. And renegotiated a perpetual easement and not another 20 years.

Mr. TURNER. Yes, renegotiated a perpetual easement.

Senator ABDNOR. What do you think is the percent of those that have perpetual easements now? Of those that have them, do you think if they had the option they would get out?

Mr. BARBER. I think the percentages that Mr. Turner gave us would probably be representative of about 27 percent.

Mr. SIEH. Senator, I think it would be a lot more palatable to the people though if they were on a 20-year basis. It would be a lot more fair to me and the generations to come.

Senator ABDNOR. Thank you. The next witnesses are Wayne Baron of the National Wildlife Federation, Roger Pries of the South Dakota Wildlife Federation, and Warren Chappell of the Missouri River Breaks Audubon Society. Gentlemen, I'll leave it up to you how you want to proceed. Just give your name. Your statements will be made a part of the record. If you can summarize that would be best.

STATEMENT OF WAYNE BARON, NORTH CENTRAL REGIONAL EXECUTIVE, NATIONAL WILDLIFE FEDERATION

Mr. BARON. Mr. Chairman, I am Wayne Baron, north central regional executive for the National Wildlife Federation, living in Mandan, N. Dak. In my capacity with the National Wildlife Federation I work with our affiliated organizations in the States of South Dakota, North Dakota, Minnesota, and Wisconsin.

I appreciate the opportunity to appear here.

The National Wildlife Federation is the world's largest conservation-education organization. We have over 4 million members and supporters throughout the United States and 51 affiliated statewide and territorial organizations. We have over 40,000 members in South Dakota, North Dakota, and Minnesota.

Wetlands are so important to this area and adjoining Canada that our part of the continent is often called the prairie pothole region. Waterfowl hunters have long thought of the prairie pothole region as the duck factory of the continent. These prairie pothole States annually account for 60 to 70 percent of the 10 to 12 million ducks produced in the 48 conterminous States. The area is so important for waterfowl production alone that the U.S. Fish and Wildlife Service has made acquisition of prairie wetlands their No. 1 acquisition priority.

But actual acquisition has not kept pace with Fish and Wildlife Service goals or with the rate of drainage. Due to ill-conceived and

illegal state laws, acquisition in North Dakota has been at a complete standstill for many years. In spite of a U.S. Supreme court decision supporting acquisition, Secretary Watt has refused to seek appropriations or to spend money to acquire wetlands in North Dakota. Some wetlands have been acquired in South Dakota and Minnesota, but even here too, little is being done, too slow.

Our prairie wetlands are under terrible pressure. They are being drained at a rate of 35,000 acres per year in North Dakota, South Dakota, and Minnesota. It's estimated that the Garrison Diversion project alone will destroy 70,000 acres of prairie wetlands in North Dakota. But while such large projects are a very real threat to our wetlands base, the actions of individuals are the more insidious, and a long-term threat. Wetlands that were considered undrainable a few years ago are now easily drained by individual landowners who use large, powerful 4-wheel-drive tractors and other new farm machinery.

So long as Federal tax policy provides incentives to drain wetlands through the system of investment tax credits and "conservation" deductions and credits, wetlands will be drained. Perhaps the most obvious of these incentives is the one which allows the deduction of up to 25 percent of a landowner's gross income against taxable income for the full cost of soil and water conservation practices, which include the construction, control, and protection of diversion channels, drainage ditches, irrigation ditches, earthen dams, watercourses, outlets, and ponds. Expenses exceeding the 25 percent allowed in any 1 year may be deducted in future years. Federal tax codes also allow a 10-percent deduction for capital depreciation applicable to drain tiles, and a 10-percent investment credit against federal taxes is available for the investment of drain tiles. Research in Wisconsin has shown that these special incentives can increase the net after-tax income of the landowner and mean the difference between a profitable and unprofitable land drainage project.

Wetland are being drained rapidly on the prairie. The duck factory is being degraded and destroyed. But we are losing more than just ducks. Research conducted by the South Dakota State University and the Agricultural Experiment station at North Dakota State University has documented a broad range of other values that we humans get from the prairie potholes—ground water recharge, grazing land, recreation, and flood control are just a few of these values.

But the folks in the Red River Valley in northeastern North Dakota and Manitoba don't need research to see and feel what they've lost as a result of wetlands drainage. Many individual farmsteads and a number of communities in the valley are now ringed with tall levees are designed to keep out the increasingly common floodwaters that have increased due to wetlands drainage. I think a lot of those folks would agree that we need to halt or reverse the loss of wetlands on the prairie.

So what do we do about this problem? S. 1329 and the amendments the National Wildlife Federation has proposed in earlier testimony will go a long way toward solving the problem.

It is very clear to anyone who has closely studied the problem that more money is needed for State and Federal acquisition. The

Fish and Wildlife Service small wetlands acquisition program should be strengthened in the prairie pothole region with a strong mandate to acquire both fee title and easement areas. Willing sellers, people who want to sell wetlands to the Fish and Wildlife Service, are waiting in line, but the Fish and Wildlife Service needs a large amount of money to do the job that must be done if even a small portion of the remaining prairie wetlands are to be preserved. A mechanism to increase State acquisition also should be included in any comprehensive wetlands legislation, but we firmly believe that in the prairie States only the Fish and Wildlife Service will be able to acquire the acreages that are needed.

I also encourage you to go the first step in eliminating the governmental incentives that now enhance wetlands drainage. No State or Federal acquisition program can do enough by itself. Elimination of existing incentives to drain must accompany a strong acquisition effort. Our Washington staff has suggested mechanisms for limiting the incentives to drain and while I am not prepared to present legislative language to accomplish this I do want to stress my support for this action.

Mr. Chairman, I hope I have portrayed a sense of some urgency to you. Each day that I travel around these prairie States I see new drainage projects, crops where cattails once grew, and landscape changes that are being imposed on us a little at a time. We don't have much time left. If action is not taken soon our argument will be over. Our wetlands will be gone. Thank you.

STATEMENT OF ROGER PRIES, EXECUTIVE DIRECTOR, SOUTH DAKOTA WILDLIFE FEDERATION

Mr. PRIES. Senator Abdnor and Senator Chafee, I'd like to thank you for the opportunity to speak today. I'm Roger Pries the executive director of the South Dakota Wildlife Federation. The South Dakota Wildlife Federation is South Dakota largest conservation sportsmen's organization representing over 3,000 members, many who are active farmers and ranchers throughout the State.

The South Dakota Wildlife Federation has been and continues to be a strong supporter of wetland preservation. An indication of this support is shown by the passage of the wetlands supportive resolutions during the South Dakota Wildlife Federation annual meeting in 4 of the last 7 years, in 1976, 1977, 1979 and 1981. And I will just briefly elude to those four resolutions.

In 1976 the South Dakota Wildlife Federation went on record of supporting the water bank program of leasing class 1 through 5 wetlands to preserve the wetlands and enhance wildlife production. In 1977, the South Dakota Wildlife Federation went on record of supporting acquisition of wetlands by the Federal Government through the purchase and leasing of wetlands from willing sellers to assure future generations the opportunities to enjoy the splendor of our native waterfowl.

In 1979, the South Dakota Wildlife Federation passed a resolution of concern for wetland drainage and filling, stating that the value of wetlands for waterfowl production, wildlife habitat, and improvement of water quality, ground water recharge, and flood-water retention is irreplaceable. By this resolution the South

Dakota Wildlife Federation opposed any efforts by the South Dakota Legislature or others which would result in a loss of wetlands, and furthermore the South Dakota Wildlife Federation supports the program of the U.S. Fish and Wildlife Service which preserves and protects wetlands by purchase of perpetual easements from willing sellers.

In 1981, the South Dakota Wildlife Federation passed a resolution in support of preservation and restoration of wetlands for the purpose of waterfowl breeding, winter cover for upland deer, and the trapping of small furbearers.

It showed a concern for wetland destruction leading to a hydrologic budget imbalance which would lead to the lowering of the water tables and creating flooding problems in downstream low lying areas.

It asks for a continuation of the Federal Wetlands Loan Act requiring the wetlands to be either fee title or easement purchases by the U.S. Fish and Wildlife Service and the U.S. Department of Agriculture water bank program.

So in conclusion of my testimony, it is quite obvious that the South Dakota Wildlife Federation is in strong support of extension of current methods of wetland preservations such as perpetual easements, and the purchasing of wetlands from willing sellers, and the waterbank program. The federation recognizes that other avenues should be explored to help preserve wetlands and be financially assisted from sectors of the population other than the supporting fraternities. It is high time that the value of wetlands be recognized in their entirety and the destruction and degradation of these national natural resources cease. Thank you.

Senator ABDNOR. Thank you.

STATEMENT OF WARREN CHAPPELLE, PRESIDENT, MISSOURI BREAKS AUDUBON SOCIETY

Mr. CHAPPELLE. My name is Warren Chappelle. I am President of the Missouri Breaks Audubon Society in Pierre, S. Dak. We have over 100 members statewide, but most of our members live in the central South Dakota area. I would like to thank you Senator Abdnor and Senator Chafee for holding this meeting in South Dakota and providing us the opportunity to speak to these issues.

It's obvious from your earlier statements Senator Chafee that you have appreciation for the ground water recharge features of wetlands and the flood control and water quality aspects as well.

In a written statement prepared by the Lakota Audubon Society of Brookings, S. Dak., they'll go into more detail. My comments are just general comments.

Basically we support your bill, Senator Chafee. It would extend the only mechanism currently available that assures that not all of our wetlands will be destroyed.

It has been estimated that wetlands in South Dakota are being drained at a rate of as high as 13,000 acres per year. In 1975, we had about 1.3 million acres of wetland, and at that rate of destruction in less than 100 years we would have none left. South Dakota's wetlands are vital production and migrational habitat for the birds of the central flyway.

It is with a sense of urgency that my board asked me to speak today. We are watching in North Dakota the Garrison Diversion unit that at one shot is destroying over 70,000 acres of prime waterfowl marshes and some truly unique wetland environments.

At the same time in South Dakota there is increasing pressure to build a Garrison extension project and a CENDAK irrigation project. The CENDAK project, which is twice the size of the authorized Garrison project, by itself will destroy over 55,000 acres of wetlands.

While all this is going on, the Reagan administration, under the guise of a regulatory reform, has weakened the enforcement of the 404 provisions of the Clean Water Act to the point where there is little review, much less protection, of our wetlands that are being affected by dredging and filling projects.

We support your bill, Senator Chafee, and we urge Senator Abdnor to support it also, because it would extend the life of a needed and popular program, a program that is fair, that only purchases easements from willing sellers.

If the Wetlands Loan Act is not renewed by September 30, 1983, the acquisition offices would be closed; and if and when the program were to start up again, it would result in the same organizational problems and delays that face any new program.

In our support of your bill, we have only one reservation and that is that it does not go far enough. It will save a certain number of wetland acres from destruction, but it probably won't save some of the really unique and rare ones. We would like to see in addition, a Wetlands Preservation Act, whereby truly rare and unique wetlands could be identified and protected.

Before I close, I'd like to address a couple of comments that were brought up earlier. My first set of comments have to deal with some of the acres and the Missouri River mainstem reservoir that were thrown out.

The numbers that I'm using is coming from table 3, Habitat Inundated by Lake Oahe and Lake Sharpe from the final feasibility report, final EIS for Lake Oahe, Lake Sharpe, South Dakota, Fish and wildlife mitigation by the Corps of Engineers in the Omaha District.

These numbers deal only with Lake Oahe, Lake Sharpe, the two largest mainstem reservoirs in South Dakota. The total area affected by those two reservoirs is 279,000, which is over half of the 530,000 acres that has been tossed out.

I'm taking issue with the statement that 500,000 acres of prime agricultural lands were taken by the reservoirs. A point of fact with the Lake Oahe and Lake Sharpe reservoirs, according to the Corps of Engineers there was only 7,400 acres taken, and the remaining—of the remaining acres 55,000 were water and barren sandbar, and 223,500 were total wildlife habitat. I agree with the Corps of Engineers and I would say that what South Dakota lost to those mainstem reservoirs was primarily wildlife habitat.

In addition the idea was brought up that the sale, or the reservoirs—the fact that the reservoirs exist resulted in drought liquidation of cattle in 1976. According to these same numbers from the Corps of Engineers, pastureland amounted to 123,000 acres and native hay 14,600 acres. Those pasturelands were pastured because

cattle were on them. They weren't available to augment hay needs elsewhere and the 14,600 acres of native hay that were listed probably were used as winter feed for these cattle that were pastured on the other 123,000 acres of pasture.

The last point I would like to deal with is the question that was brought up about easements and the problem it caused for land purchasers. As a landowner myself, I find it inconceivable that anyone would invest any money in real estate without checking the abstracts of title. It's—any businessman who goes to that extent of purchasing hundreds of thousands of acres for hundreds of thousands of dollars of real estate without checking the abstracts probably won't remain in business very long.

And again, I'd like to thank you, Senator Abdnor, for scheduling this hearing, and you, Senator Chafee, for coming to South Dakota to hear our concerns. Thank you.

Senator CHAFEE. Thank you very much, all of you.

Senator ABDNOR. I want to ask one thing here. Mr. Baron, you used the word reverse, and I find that kind of interesting. All the attention in the whole Nation seems to be on our wetlands out here. We have allowed States like Ohio and Indiana who, I understand, had considerable amounts of wetlands drained. Do you think there ought to be some attention given to those States so they can participate in this too and try to reclaim some of the wetlands back in those counties or continue to come to a State like South Dakota and say you are the ones that have got to give these up?

Along with that, I was not particularly enthusiastic about the dams to start with. As a matter of fact I was certainly against the high dams but some of the people insisted that we have to have them and now, I'm sure the people who lost their land would love to have it back. I think it's a lot more valuable than you suggested Mr. Chappelle.

But on the other hand I know my colleagues from the south of me would have had a fit had the dams not been build because they have saved those people millions of dollars by preventing floods, not to mention the lives that have been saved.

How do we measure that? That is what South Dakota's contribution is and we made quite a contribution to that. Maybe we shouldn't have. How do you relate future projects with wildlife? Do you think we should establish a priority over that rather than think about flood control programs in the future to preserve those lands? We have to think in the broadest terms on this in Washington. We can't think in terms of there goes some duck hunting that we wanted. We have to measure the fact there are a lot of lives lost and damage in the millions of dollars and based on that we should be looking at some additional flood control programs. Should I be against those because we don't want to lose wetlands or what?

Mr. BARON. If I can respond to your question directed at me concerning the other States as far as acquisition goes. I highly agree with you Senator Abdnor about increasing acquisition in other States and also restoring wetlands in other States. However, the fact remains that the resource is in the Prairie Pothole Region. The waterfowl are here and that sounds to me like the most economic way to do this.

As far as the question of balancing flood control against wildlife I don't necessarily see it as a problem of one priority over another. I see it as a problem that historically wildlife have not been considered at all in the equation and I think you know that the Big Bend and the Oahe projects at this point in time have not resulted in wildlife mitigation for those wildlife losses. We'd just like to see that when these decisions are made that these factors, the wildlife factors are taken into consideration and given due consideration.

Mr. BUTERBAUGH: If I might make a couple of comments. One, I believe Mr Baron you said the secretary's refused to re-up any money for land acquisition in North Dakota since the Supreme Court decision. The Federal budget process as you probably are well aware of runs at least 2 years ahead. The first budget that the secretary has any flexibility on is 1985. So the 1984 budget is in Congress and the 1983 is in place and we are spending that money and so we have this time lag from the time the Supreme Court decision of this spring until he can react to that amount. I can't tell you how he'll react. All I can say is he doesn't have flexibility unless he reprogrammed that money that quickly in North Dakota.

And the other comments you keep talking about and landowners being unaware that they had purchased a farm that had an easement. We are working on a process where we'll notify a landowner or new renter the minute he moves on or takes over a piece of property that has an easement we are sending him a letter and trying to work out this process and be in place here in North Dakota and South Dakota in the near future. And that's for the future. And we will also try to see that they don't go out there unaware.

Senator ABDNOR. Thank you. The next witness is John Henning. I guess I had better admonish everyone again that we would like to get as many of the witnesses in as we can and to remind them that everything will be placed in the record in order to give more people the opportunity to be heard.

Mr. HENNING. I'm John Henning and I'm a landowner and farmer around Waubay.

Senator ABDNOR. OK.

STATEMENT OF JOHN HENNING, FARMER, WAUBAY, S. DAK.

Mr. HENNING. I would just like to say that from my own personal experience that perpetual land easements has been of the biggest swindles in history on the landowners. Land changes ownership and in many cases the new owner wants to farm it differently but if it has an existing wetland easement he remains bound by it without any compensation. The wetland easements should carry an annual payment and upon transfer of title to a new owner the easement should be terminated.

In Day County, S. Dak., we had some 28 original wetlands easements which were for a period of 20 years. After the 20 years expired 26 did not want any part of any easements and 2 were undecided, which should tell us something.

I speak from actual experience as I have purchased a quarter of land with an existing wetland easement and when it comes to farming around some of the smallest puddles and sloughs which

are a real nuisance costing a great deal of extra time and gas and fuel and in my own experience the shallow wetlands contribute absolutely nothing for wildlife as ducks which make a nest by these potholes very seldom survive, as the potholes are dried out by the time they hatch and then these ducklings are stranded in the middle of no place and very seldom reach deeper waters. I have seen these broods many times wiped out by predators and lack of water. So these shallow wetlands contribute nothing for wildlife or the farmer.

The sound sensible solution is to eliminate these shallow wetlands by filling and draining them into larger and deeper sloughs, and eliminate both the problem for the farmer and wildlife. Again by my own experience I have done this and had very good results.

It is very easy to someone who does not own or farm any land to pass laws or draw up rules and regulations to forbid draining or filling of wetlands as they have nothing to lose and don't have the headaches of doing the farm work under those conditions. And I must say that those people are least qualified for such decisions yet it seems that they have the most to say. Little do they realize how much cost and inconvenience is incurred upon the landowners. Just how much do they expect the landowners to contribute before they will be satisfied? Let the nonlandowners contribute their share of costs toward wildlife and I am sure the landowners will do their share. Thank you.

Senator ABDNOR. Thank you. Mr. Henning, did you say that when you bought that land you were aware of the easement on it at the time?

Mr. HENNING. No. No, I wasn't.

Senator ABDNOR. You weren't.

Mr. HENNING. I bought it on a contract for deed and the realtor was supposed to go through the record and he did not catch that.

Senator ABDNOR. I see. Would you have paid less for the land had you been aware of it?

Mr. HENNING. I certainly would. Yes, I certainly would. Because it does take away value from the land.

Senator ABDNOR. Does that happen often? Don't they review the abstracts carefully?

Mr. HENNING. I think it was an oversight but it did happen. It's happened perhaps more than once, but not all that often.

Senator ABDNOR. How did you suggest making something larger?

Mr. HENNING. Drain the shallow small puddles into larger waters or sloughs where they would probably stay wet longer probably at least until August or September where the ducklings would survive. The small puddles are probably wet in April or May and the ducks make the nests there by the time they hatch, those sloughs are dry then. And actually that would contribute nothing but have a negative effect on wildlife. And also create a headache for a farmer.

Mr. BUTERBAUGH. If I might comment on that statement, while there is some truth in what you are saying about possibilities that some of these small wetlands can be death traps, there is much value in the spring for feeding. Those small temporary wetlands are extremely fertile as you are well aware of and the ducks that

feed on those determine how successful they may be later on where ever they nest, and going on into Canada.

The ideal situation is that conflicts of wetlands which include large permanent deep wetlands, slopes, small temporary ones, and it isn't one or the other. What you want is maximum production. You need the wetlands of all sizes protected and all types as well as the uplands adjacent to them. A mixture of all types is what you need.

Mr. HENNING. While we are on the feeding situation here I would also like to bring up if you do have good reproductive years on ducks and geese then who's going to pay for the damage and degradation they do? I live right by a refuge and we have a problem in some years.

Mr. BUTERBAUGH. The minute you have a problem let our local people know and we'll be out to try and help you.

Mr. HENNING. We have very poor results. But we changed managers now and he's very quick. The previous manager was worthless.

Senator ABDNOR. Thank you very, very much.

Mr. HENNING. Thank you.

Senator ABDNOR. Our next witnesses are Mr. Spencer Vaugh I believe, Gary Pearson, Grady Mann, Ken Houseman, and Harriet Montgomery. Have we got enough chairs for everyone?

I'd like to point out that I know a number of the witnesses represent wildlife societies and that is fine, but I hope we can avoid repetition as much as possible so as to be able to move along so everybody gets a chance to testify.

STATEMENT OF SPENCER VAUGH, SOUTH DAKOTA CHAPTER, THE WILDLIFE SOCIETY

Mr. VAUGH. Senator Abdnor, I'm Spencer Vaugh, and I'm representing the South Dakota chapter of the Wildlife Society. I have one page here.

The South Dakota chapter of the Wildlife Society is a non-profit organization composed of professional wildlife biologists, conservation officers, and administrators of public and private agencies. The chapter is dedicated to the wise management and conservation of the State's natural resources.

Prairie wetlands are the most productive and most important wildlife habitat in eastern South Dakota. Although they constitute only 3 percent of the State's land mass, prairie wetlands support 80 percent of all waterfowl production. The other 20 percent is mainly in west river stock dam country. They are extremely important for scores of other migratory and resident species, such as our State bird, the Ringnecked Pheasant.

Recent surveys by the U.S. Fish and Wildlife Service revealed that while wetlands produce up to 4 million waterfowl each year, they also produce agricultural benefits, particularly livestock forage. During 1980 almost 75 percent of the wetlands surveyed were used for some agricultural purpose, hay, grazing, or crops. In 17 northeastern counties wetlands produced as much as 300,000 tons of hay for drought-plagued farmers in 1980. Studies by the

United States Geological Survey indicate prairie wetlands function as recharge sites for aquifers.

Nevertheless, wetlands continue to be drained with over 250,000 acres lost since the mid 1950's. Today in South Dakota we are losing between 6,000 and 7,000 acres annually. For this reason, the South Dakota chapter of the Wildlife Society strongly supports continuation of the Small Wetlands Acquisition program. We would add that the in-lieu of tax payments should be corrected so counties receive 100 percent of what they are supposed to. For 3 straight years, a small contingency of opponents of wetland protection through easements introduced State legislation that would have severely limited the U.S. Fish and Wildlife Service's purchase of wetland easements. In each instance, the legislation failed to become law. Since 1961 over 6,600 voluntary easement contracts have been purchases for over \$15 million; many more landowners have indicated an interest in the program. There is broad support for this program.

We also support the fundamental elements of Senate Bill 1329 entitled the Emergency Wetland Resources Act of 1983; however, we suggest modification of title III—Financial Assistance to States for Wetlands Acquisition. The proposed formula for distribution of funds may do little to stimulate State acquisition efforts in sparsely populated areas such as South Dakota and North Dakota. State budgets and political realities may preclude the establishment of even a modest wetland fund for Federal cost-sharing. We suggest a distribution formula that emphasizes quantity and quality of wetlands as well as their priority ranking in the U.S. Fish and Wildlife Service's 33 national priority categories. Such an approach is based on natural resources needs rather than financial resource capability.

As an example here in South Dakota our Game, Fish and Parks Department's acquisition budget is about \$250,000, and we use most of that for paying taxes on game production areas. That will leave very little to buy the additional sloughs. Thank you.

Senator ABDNOR. Thank you.

STATEMENT OF GRADY MANN, MINNESOTA CHAPTER, THE WILDLIFE SOCIETY

Mr. MANN. Senator Abdnor and Senator Chafee, my name is Grady Mann and I represent the Minnesota Chapter of the Wildlife Society across the border here. I have four pages here, but I will give you about six sentences.

Our Society is made up largely of professionals within the field of wildlife management from the various universities and State wildlife managers and the Federal people. The Wildlife Society offers to you their full support in the efforts to extend the Wetlands Loan Act, and to make efforts to fund this program through increased duck stamps, or the use of Land and Water Conservation Funds, and to charge user fees to the individuals other than hunters who use National Wildlife Refuge lands.

Boiled down in a nutshell our Society supports the increase in the duck stamps from \$7.50 to \$15 and we urge you to accomplish this feat as quickly as possible, and if a graduated rate increase is

most effective politically, then we'll support that measure. However, we do recognize the need for an immediate increase if that can be accomplished, and we will support you.

Senator ABDNOR. Thank you. You have a longer statement for the record?

Mr. MANN. Yes.

STATEMENT OF KENNETH HOUSEMAN, SOUTH DAKOTA RESOURCES COALITION

Mr. HOUSEMAN. We want to thank Senator Abdnor and Senator Chafee for this meeting. I'm Kenneth Houseman of the South Dakota Resources Coalition and our organization is an organization of diverse groups with a common interest in conservation and the wise use of natural resources.

We've always supported and shall continue to support the small wetlands acquisition programs. However, we along with many others both in and out of the government, realize that a larger effort is needed now that we have much more acreage in agricultural crop production than we need and must pay farmers to leave land idle it's time to come up with programs and cash incentives that make saving wetlands and other natural areas more profitable to landowners than draining and plowing them.

As long as the landowner can take money from the government for leaving land idle and then drain or buy or lease other land to replace it, our conservation efforts are doomed. We have already gone too far in cultivating marginal lands. The world cannot afford to buy the food that we produce on this marginal land with the large scale high cost inefficient methods we are using.

What is the good of putting more land into production when people cannot afford to buy the food and our taxpayers are required to support all this inefficiency? We have the ability to produce large crops but the cost is too great.

We urge Congress to come up with programs to make conservation attractive and to reduce the surplus crops that cost us so dearly. Recent studies on the value of the wetlands show that the benefits of flood control, groundwater recharge and pollution and sediment control, dwarf the benefits to Fish and Wildlife as important as they are.

These studies suggest that past wetland drainage has contributed significantly to present problems of flooding, groundwater depletion and pollution and sedimentation that greater support of wetland preservation and perhaps recreation may be warranted.

The executive order that any wetland losses from Federal projects be mitigated should certainly be rigidly enforced. If a project cannot justify this expense, it's probably not a worthwhile project.

I just want to also note that our organization supports Senator Chafee's bill 1329 and the National Wildlife Federation's amendments.

I just want to mention or comment on the small wetlands of less than five acres are more important to wildlife and probably for other reasons than larger ones. But as Mr. Buterbaugh mentioned we need all of them. And there was a comment made about possibly rebuilding lost wetlands in other states. This—we would sup-

port that effort but we must realize that it's much more expensive to do that then to save the ones we have now in our own State. So any effort to make or preserve wetlands is worthwhile at whatever cost we feel. Thank you.

**STATEMENT OF DR. GARY PEARSON, NORTH DAKOTA CHAPTER,
THE WILDLIFE SOCIETY**

Dr. PEARSON. Senator Chafee and Senator Abdnor, my name is Gary Pearson, I am from Jamestown, North Dakota, and I represent the North Dakota Chapter of the Wildlife Society.

We would like to address several aspects of the Federal wetlands program, including public support for the program at the national and local level, the value of wetlands, issues surrounding the program, and alternatives to the program.

Few natural resource issues have enjoyed as clear a national consensus as has the preservation of wetlands. A recent nationwide poll conducted by Louis Harris and Associates and released in December, 1982, revealed that 83 percent of the people believe that it is very important to protect this country's remaining wetlands from further destruction, and 69 percent want Federal wetland preservation standards made more strict.

This great public concern for wetland resources is not some new fad, but has its roots in the early part of this century with the passage of the Migratory Bird Act of 1913, the Migratory Bird Treaty Act of 1918, the Migratory Bird Conservation Act of 1929, and the Migratory Bird Hunting Stamp Act of 1934. The Congress has continued to respond to and to share this concern for wetlands by amending the Stamp Act in 1958 to provide for the acquisition of small wetlands, and by passing the Wetland Loan Act in 1961 and giving virtually unanimous approval to its extension over the last two decades.

The Congress has also responded to the continued destruction and degradation of the Nation's wetlands by curtailing the subsidization of drainage by Federal agricultural programs and by increasing Federal jurisdiction over wetlands under Federal water pollution control laws. Indeed, a half century ago the Congress recognized the frequently adverse impacts of water projects of fish and wildlife resources, and it took steps, through the Fish and Wildlife Coordination Act of 1934, to minimize those impacts.

This public support for wetland preservation has been further reflected in the 1973 policy statement developed by the U.S. Environmental Protection Agency and directed at protecting wetlands, and in the 1977 Presidential Executive Order requiring that wetland losses be minimized and that wetland values be preserved by Federal projects.

More than 60 years ago, the United States Supreme Court recognized that the protection of migratory birds was a national interest of very nearly the first magnitude, and the Court again cited this first magnitude national interest in its March 7, 1983, decision affirming Federal circuit and district court rulings striking down North Dakota statutes curtailing the Federal wetland acquisition program.

No clearer evidence of the wide public support in North Dakota for wetland preservation is needed than the 13,000 landowners who have willingly participated in the fee and easement aspects of the Fish and Wildlife Service's Small Wetlands Acquisition program in North Dakota since its inception. In fact, since the program was terminated in 1977 as a result of the State's unconstitutional restrictions, over 300 landowners have taken the initiative and have approached the Fish and Wildlife Service expressing their desire to participate in the Federal wetlands program.

Support within North Dakota for the Small Wetlands Acquisition program is not limited to those who realize financial benefits from the program, but it wide-spread among landowners and sportsmen in the State. The League of Women Voters of North Dakota recently completed a comprehensive study of wetland issues in the State, and subsequently released a position statement urging that recognition of wetland values in North Dakota be encouraged through a combination of State and Federal programs.

We would like to call the committee's particular attention to the attached copies of letters from the mayors of Fargo and Grand Forks, North Dakota, and Moorhead, Minnesota, urging continuation of the Small Wetlands Acquisition program for its benefits in curtailing the intensification of flooding in the Red River Valley. As Mayor Lanning of Moorhead points out, between 1969 and 1979, Moorhead and Fargo experienced flooding conditions which should have occurred only over a period of 250 years, and he cites wetland drainage as the primary reason for this flooding. It should be noted that these three mayors represent cities having a combined population of 135,000 people, a significant number when compared to North Dakota's total population of 652,000.

Although wetlands provide amenities enjoyed by a large segment of our population, the broad public support for wetland preservation is based on the very real and practical benefits they provide for virtually everyone.

Wetlands are important to the people of the Midwest, the Nation and neighboring countries. Water in the semi-arid Midwest is a critical element, and prairie wetlands and marshes are where most of this water is found.

In addition to storing water supplies wetlands provide water purification, flood control, groundwater recharge and erosion control. They are a source of forage and water for livestock, and they provide recreational benefits from wildlife. In addition to these human benefits, wetlands are the most important wildlife habitat in North Dakota for most species of migratory birds and resident species such as deer and pheasants.

The national importance of wetlands is reflected by the fact that North Dakota produces more waterfowl than any other State in the lower 48, and by the fact that in 1979 2,100,000 people, including 61,000 in North Dakota, purchased duck stamps for migratory waterfowl, hunting, and conservation. It should be noted that one person in 115 purchases a duck stamp nationally, but in North Dakota, the rate is 1 in 10—more than 10 times the national average.

Most wetland drainage in North Dakota is done to expand agricultural production, but, in an agricultural economy that has been

characterized by overproduction and depressed commodity prices since the turn of the century, it might even be difficult to demonstrate any significant long-term private benefits from wetlands drainage for agricultural purposes. It is ironic that North Dakota has the highest rate of participation in the Federal payment in kind program designed to take cropland out of production, and, at the same time, is draining some 20,000 acres of wetlands to put more land into crop production every year.

Opponents of wetland preservation frequently accuse the U.S. Fish and Wildlife Service of attempting a Federal land grab, and they usually cite incorrect and grossly exaggerated figures for the acreage under control by the Fish and Wildlife Service. For example, we frequently hear statements such as:

The Federal Government has acquired, to date, approximately 5.2 million wetland and associated upland acres by easement and fee in North Dakota.

The truth is that the U.S. Fish and Wildlife Service has jurisdiction—fee title or easement—on only about a quarter of this acreage.

Little misunderstanding occurs over the acreage which the Fish and Wildlife Service owns in fee, or over the acreage in easement refuges. The discrepancy arises over the 758,000 acres of wetlands under easement, and it is the result of the manner in which the legal descriptions of the wetland easements were written. Prior to 1976, the wetlands under easement were simply described as those natural and recurring wetlands within a certain legally described parcel of land, such as a section or a quarter section. Although the easement contracts clearly state that they apply only to the wetlands within those areas, and that they restrict only the draining, filling or burning of the wetlands, some critics of the program still insist on including all of the uplands associated with the wetlands in the acreage under easement.

We would, therefore, like to call the committee's attention to the attached copy of a July 5, 1983, letter from the Acting Assistant Secretary for Fish and Wildlife and Parks to Mr. Homer M. Engelhorn, manager of the Garrison Diversion Conservancy District. The letter demonstrates that the difference between the acreage under wetland easement and the total acreage of the parcels in which the easements are located had been discussed with Mr. Engelhorn and with North Dakota Gov. Allen Olson in November 1980. Unfortunately, the letter also demonstrates that, despite efforts by the U.S. Department of the Interior to provide correct information on the acreage under wetland easement in North Dakota, drainage proponents continue to disseminate patently inaccurate information.

The Refuge Revenue Sharing Act of 1964 provides that the net receipts from the National Wildlife Refuge System are to be used to make payments in-lieu of taxes to the counties in which refuges having such revenue producing activities are located.

Over the last 3 years, the payments in North Dakota have been 90.6 percent, 87.5 percent, and 100 percent, respectively, of the full entitlement. Although the payments in lieu of taxes have fallen short of the full entitlement in some years, in others the revenue sharing payments have exceeded the taxes which would have been

paid to the counties if the same land had been in private ownership.

To illustrate, in 1982, when the full revenue sharing entitlement was paid, the total payment in lieu of taxes for the 417,055 acres owned in North Dakota by the Fish and Wildlife Service was \$679,117, or just under \$1.63 per acre. If the 417,055 acres of Fish and Wildlife Service fee title lands in North Dakota would have been in private ownership, the counties could have expected to have received \$653,391 in property taxes from these lands in 1982. As can be seen, however, the counties received \$25,726 more in revenue-sharing payments than they would have received in taxes if the land had been in private ownership.

A common complaint of critics of the federal wetlands program concerns the acquisition of perpetual wetland easements. We frequently are told that a landowner had sold an easement for only a few dollars per acre 20 years ago, and now that land is worth several hundred dollars per acre—or would be if it could be drained. Although one may lament a past decision, no business, or government, could operate if contracts could be revoked whenever economic conditions change. A deal is a deal, and it can be evaluated only by those involved in the transaction at the time it is made.

When one is considering the preservation of the Nation's migratory waterfowl resources, it is only reasonable to think it terms of perpetual protection of the necessary habitat base. Indeed a perpetual easement on a wetland has no more practical effect than a 99-year lease for a pipeline or powerline.

One more final thing. State or local programs have been suggested as an alternative to Federal wetland preservation efforts. We would point out, however, that, in North Dakota, the State and local entities entrusted with water management responsibilities have not implemented any effective wetland preservation efforts. A wetland tax credit bill was withdrawn from the last session of the North Dakota Legislature, and the State water bank program has never been funded. Statutes adopted by the 1977 legislature restricting Federal wetland acquisitions, although subsequently struck down by the courts, prevented private landowners from selling their wetlands to the Federal Government. Similar statutes passed by the 1977 legislature and continued funding restrictions imposed by the legislature have virtually eliminated wetland and other wildlife habitat acquisition by the North Dakota Game and Fish Department.

This year, the North Dakota Legislature adopted amendments to the State's corporate farming law which prevent landowners from selling farm or ranch land to private, nonprofit organizations which might be interested in preserving wetlands, thus eliminating still another option for the landowner who wants to preserve his wetlands.

The effect of these actions and inactions by the North Dakota Legislature has been progressively to restrict the options available to landowners for preserving wetlands, and to force those landowners who want to preserve their wetlands to shoulder the full burden and the full costs of doing so. The ultimate effect, of course, is not only to encourage landowners to drain their wetlands, but to leave them with virtually no other alternative.

In fact, the only realistic alternative available to a North Dakota landowner to preserve his wetlands is to do it at his own expense, or hope that a Federal wetland acquisition program is reinitiated in the State. Thank you.

Senator ABDNOR. Thank you. We kept the lady for the last instead of first.

STATEMENT OF HARRIET MONTGOMERY, MEMBER, WATER COMMITTEE, LEAGUE OF WOMEN VOTERS OF SOUTH DAKOTA

Ms. MONTGOMERY. You left me practically speechless after all that detail, too.

Senator Chafee and Senator Abdnor, I am Harriet Montgomery of Aberdeen, S. Dak., a member of the water committee for the League of Women Voters of South Dakota. I wish to present a statement for the League of Women Voters of North Dakota as follows.

They have made several statements which are included in the printed material which I will give to you. But, in order to achieve the wisest use of wetland resources in North Dakota, prime consideration must be given to their role in the areas of floodwater storage, ground water recharge, wildlife values, and pollution control.

Consideration should also be given to private property rights, agricultural uses, educational values, and aesthetic value.

Decisions on the use of wetlands should consider their effects on the natural watershed in which they are located.

Water management boards should represent a natural watershed area rather than representing a political unit such as a county.

Since wetlands benefit the public, the costs of conserving these should largely be borne by public funds through State and Federal programs, with a smaller share carried by the landowner and/or by local and private programs.

Landowners should have the right to participate in Federal wetland programs as well as private conservation programs.

The League of Women Voters of North Dakota believes that the State of North Dakota should encourage landowners to conserve their wetlands through programs such as: tax incentives, direct compensation, the State purchase or easement programs, enforcement of drainage regulations, efforts to inform the landowners about the true costs and benefits of drainage and preservation, encouragement of other governmental units for their problems to consider all wetland values in deciding their best use.

The league believes that it is desirable to hold water on the land as long as possible to aid in floodwater storage, ground water recharge, and other wetland values.

Those who do hold water on the land, contributing to wetland conservation, should be compensated for doing so.

Those who alter the hydrologic pattern should share in the responsibility for resulting downstream impacts.

Senators, this letter is to express the support of the league of North Dakota for continuation of Federal programs for wetlands protection and preservation. Following 2 years of study and discussion our members recognized the value of wetlands as an important resource, not only for wildlife, but for their role in contribut-

ing to flood control, water quality protection, hydrologic cycles, and environmental diversity.

In its position which I have read to you, the league urged that recognition of wetland values in North Dakota be encouraged through a combination of State and Federal programs. The North Dakota Legislature enacted a State waterbank program, similar to the U.S. Department of Agriculture's waterbank, and efforts are under way to establish procedures and to secure funding for its operation. This is a first step and an indication of some state concern for wetlands as a resource. But evidently no funding—nothing has been done according to the report of this other man.

The national and international importance of the wetlands resources provides reason for their protection by Federal programs. Since 1977 the only Federal activity in this State has been through the U.S. Department of Agriculture's waterbank program. The Fish and Wildlife Service's small wetlands acquisition program had not been able to assure any additional wetlands protection despite the fact that there were landowners who wished to participate in it. The league supports the right of landowners to participate in wetlands programs offered by all levels of government. Since the courts have agreed, we believe it is appropriate for the services to resume offering wetlands preservation programs in North Dakota.

Individual landowners in our State find themselves in varying circumstances and are therefore likely to be attracted by different kinds of wetlands protection measures. Some may prefer short-term programs while others like long-term agreements; some prefer to sell their wetlands to an agency or organization which will preserve their natural qualities. Almost all agree that an economically viable alternative to draining is essential if wetlands are to be preserved. The league believes that making a variety of programs available will increase the number of landowners who will participate and thus increase the number of wetlands that can be protected. The small wetlands acquisition program can be an important part of this approach, and we hope that it will be.

We thank the committee for holding this public meeting and we thank the League of Women Voters of South Dakota for presenting our statement. Nikki Seabloom, chair of the Wetlands Committee, Kathy Kadrmas, public relations for the League of Women Voters of North Dakota, Fargo, N. Dak.

[An attachment to the foregoing statement follows:]

LEAGUE OF WOMEN VOTERS OF NORTH DAKOTA

-POSITION STATEMENT ON WETLANDS IN NORTH DAKOTA-

The League of Women Voters of North Dakota believes that:

- * Wetlands are an important natural resource having value for all people of the state.
- * The state of North Dakota should have a policy recognizing that value.

The League of Women Voters believes that:

- * In order to achieve the wisest use of wetland resources in North Dakota, prime consideration must be given to their role in the areas of floodwater storage, groundwater recharge, wildlife values and pollution control.
- * Consideration should also be given to private property rights, agricultural uses, educational values, and aesthetic value.
- * Decisions on the use of wetlands should consider their effects on the natural watershed in which they are located.
- * Water management boards should represent a natural watershed area rather than representing a political unit such as a county.
- * Since wetlands benefit the public, the costs of conserving them should largely be borne by public funds through state and federal programs, with a smaller share carried by the landowner and by local and private programs.
- * Landowners should have the right to participate in federal wetland programs as well as private conservation programs.

The League of Women Voters of North Dakota believes that the state of North Dakota should encourage landowners to conserve wetlands through programs such as:

- * tax incentives
- * direct compensation
- * state purchase or easement programs
- * enforcement of drainage regulations
- * efforts to inform landowners about the true costs and benefits of drainage and preservation
- * encouragement of other governmental units to consider all wetland values in deciding their best use

The League of Women Voters of North Dakota believes that:

- * It is desirable to hold water on the land as long as possible to aid in floodwater storage, groundwater recharge, and other wetland values.
- * Those who do hold water on the land, contributing to wetland conservation, should be compensated for doing so.
- * Those who alter the hydrologic pattern should share in the responsibility for resulting downstream impacts.

Senator ABDNOR. Thank you.

Senator CHAFEE. I want to thank you all very much. I know many of you have come a great distance and this is very helpful. There are a lot of interesting points in Dr. Pearson's statement, and I just want to check on one point where you say the payments in lieu of taxes come out more than the taxes would have been. To me that sounds odd and I don't know how we can check on that but it seems astonishing that the Federal Government would pay more than taxes normally would be. We don't have to go into that now because we have your statement. But that is an interesting point and I appreciate you coming.

While I have everybody's attention I also want to say that I think that little baby over here has been so well behaved and it's great to have her. We've got the young and the old here and we are glad you brought him or her along.

Mrs. STIEGELMEIER. Matthew.

Senator CHAFEE. Matthew. We are glad Matthew is here and I don't dare give him an applause or we'll wake him up. It's wonderful.

Senator ABDNOR. Let me ask you Dr. Pearson, were you using revenue sharing on that basis?

Mr. PEARSON. I think I explained it in my statement. Basically we took the acreage in Federal wildlife ownership in North Dakota and the composition of cropland versus cropland, compared that with the statewide tax rates for cropland and noncropland and then that is what we calculated would be generated in taxes had that been in private land and we compared that to the payment that was made from the refuge revenue sharing fund.

Senator ABDNOR. Let me point out, revenue sharing goes to every State based on a formula. Indiana and Ohio get much more than South Dakota and North Dakota, and they didn't put it in their wetlands. You can't compare revenue sharing. That's a separate program going to every State in the United States and shouldn't be used against land. That's not a fair comparison unless we figure it out for the other States. That's the way we lose more and more.

Mr. PEARSON. The comparison I was making was between what the counties receive and versus what they would have gotten if the land were in private ownership.

Senator ABDNOR. It would have been very interesting to see what the other counties in the Nation would get because billions of dollars are distributed and South Dakota doesn't get much of it.

I wanted the record to show that. Thank you. Let's take a break.

[A short recess was taken.]

AFTER RECESS

Senator ABDNOR. Our next set of witnesses are Jim Stiegelmeier, Bob Saunders, Clem Russell, and Erwin Tvinnereim. Would these people come to the front and have a seat. I'm glad that you brought this to my attention, Senator Chafee, that the baby has been waiting for his father to testify and I think we have kept him waiting long enough. Mr. Stiegelmeier.

**STATEMENT OF JAMES STIEGELMEIER, FARMER,
SELBY, S. DAK.**

Mr. STIEGELMEIER. My name is James Stiegelmeier and I farm in Walworth County, S. Dak., with a partnership with my father and brother, and the family farm consists of approximately 3,300 acres scattered around the county. Not a compact unit.

We have suffered the inconvenience of going to various parcels to reseed and replant, areas that have drowned out and lost production to drowning out but we have never in our farming career, never felt that draining these acres would have benefited us as much as the condition that they are in.

Generally during dry years the low areas will produce more than the uplands and during the wet years when they drown out the uplands produce plenty.

We know the reasons for maintaining potholes. I won't go into that.

The financial benefit that is currently available with the easement program, and I'm speaking mainly about the easement provision of the bill, is quite substantial in my mind. The payment nearly equals the value of the land, the wetlands affected and just putting that money on interest would give you a reasonable fair rental. At the same time you still have the option to crop it, hay it or graze it.

As farmers we are entrusted with this land for a short time. And we need to take care of it.

We can employ all of the various conservation practices that are available, wildlife habitat, grass areas, trees, for wind erosion, waterways, and so on, terraces, and strip cropping systems but none of these things are so permanent that the next landowner cannot destroy them.

And in a perpetual easement, no burn or fill is the only permanent way which can maintain the original integrity of the land.

I'm also a sportsman and I appreciate the wildlife benefits that we have in this State. We are pleased beyond comparing the rest of the nation with the wildlife we can see from day to day just passing through our State.

I am also a former Peace Corps volunteer. My wife and I spent 27 months in the Philippines and we observed the land use policy of that government, that would possibly make everyone in this room very sad. They have destroyed much of their rain forest and this is—this has left them with flood problems and erosion problems of immense proportions.

I also traveled through New Zealand on our way back. We experienced a completely different government land use program. Approximately one-third of their land area is national parks and reserves maintained for the people and we see that preservation—we have seen that preservation of our wildlife habitat areas is necessary.

Another thing to mention is that much of our prime farmland throughout the country is being covered with cement, concrete, and roads. And we are trying to drain marginal lands to make up for that and maybe we should try to reverse our position, this nationwide position to maintain the very fine prime agricultural lands

that are being destroyed and at the same time maintain our prairie wetlands.

Thank you for the opportunity to testify, Senators.

Senator ABDNOR. Thank you.

Senator CHAFEE. Can you stay until the rest of the panel is through?

Mr. STIEGELMEIER. Yes, I can.

Senator ABDNOR. Next.

Mr. RUSSELL. I am Clem Wesley Russell of Deadwood, S. Dak. My interest in wetlands dates back to 1923 when 80 acres of my father's best farmland in Scottsbluff County, Nebr., became inundated from the wide scope of irrigation. We reclaimed the land and the pictures we have shows that.

I vehemently oppose allowing any further sales of privately owned lands to the South Dakota State Game, Fish and Parks for reasons I shall present to you and show in pictures and words.

The Senators both have pictures there of the Canadian thistles that are rampant in there in the Angostura project along the Cheyenne River and along Angostura Reservoir where they are the herdsmen for the land.

The Canadian thistles are an epidemic. They are doing nothing to stop the Canadian thistle by spraying in July. They were in there spraying the last week of July on the Canadian thistles and these pictures show as to where and how they were sprayed.

I have our farmstead in the background as often as possible in these pictures to show that they are right in our back yard. Right across the road.

The Game, Fish and Parks right across the road where this was taken in 1980. We have hay in this field, alfalfa which would not show what we wanted to show here, but this was 1980. My son is doing the farming. He purchased a farm adjoining mine and the bottom picture shows the Black Hills in the background and the corn cleaned, right up to the end of the rows.

Page 5, gets into the Game, Fish and Parks area, where cheat grass, wild oats if you please, is growing right under the evergreens and clear across the whole area.

Page 6 shows my grandchildren. A quarter of a mile away under evergreens with native grasses growing under the trees, with cheat grass growing under the evergreens on Game, Fish and Parks land, it's pathetic what we put up with here in South Dakota, all over the Nation in fact.

Here on page 7, anyone can look at it. My nephew farming my grandfather's homestead in Scottsbluff County, Nebr., took in 1887. My nephew reclaimed this wetland, mowing hay there that would be eaten virtually every stem of it, during the thirties. I saw cockleburrs and buffaloburrs growing in there and I never tried to reclaim that land because it was beyond me.

I was only renting the estate and it couldn't be done. My nephew went ahead and reclaimed that land.

There it shows the pasture rotation in the center of it, which a requirement must be in pasturing wetlands is to rotate because we have strawberry sweet clover, reed canary grass growing there and the livestock will grub it out if they run on it continuously. If it's rotated every 10 days or 2 weeks the grass continues to come back.

No. 8 shows the cattle eating all of the grass and clover between the fence posts in the wetlands.

It shows my nephew with his feet there showing clover that is growing in wetlands that the alkali comes to the surface like snow in a lot of that. The bottom picture shows no manure piles, no ant hills, only grass and clover cropped off by the animals in a crop or I mean an animal rotation.

I think that's about all I have to say.

Senator ABDNOR. Thank you.

Mr. RUSSELL. Thank you, Jim. Thank you, Senator Chafee.

Senator ABDNOR. It will be put in the record.

Mr. RUSSELL. If anyone wants to see it they are welcome to it. That's for the record.

STATEMENT OF ERWIN TVINNEREIM, FARMER, WEBSTER, S. DAK.

Mr. TVINNEREIM. I want to thank you, Senator Chafee, for coming to South Dakota and giving us this opportunity to testify and also to Senator Abdnor. I appreciate this opportunity. I'm opposed to any further funding of the wetland easement—

Senator ABDNOR. Give your name please.

Mr. TVINNEREIM. I'm sorry. Erwin Tvinnereim. I'm a farmer from Day County, S. Dak., north of Webster. I am opposed to any further funding of the wetland easement buying program, due to the fact we already have more easements in effect than we should have.

A lot of these easements were obtained through fraudulent means. For example, older people were approached who did not understand that contract they were getting into. Many thinking they were getting a payment every year. These Federal agents would approach these unsuspecting people, who trusted them, to sign these easements and invariably it would be to their detriment. Also my neighbor was conned into an easement. They showed him a contract that I had supposedly signed. And they incidentally were not on my farm. They know what the answer would be, which was false. So in this manner they got him to sign a perpetual easement, and he has regretted it ever since. He has approximately a 100-acre slough, which he has had a crop in for several years including this year and if it wasn't for this easement he could develop this slough and have a perpetual crop, instead of a perpetual easement. Now, and I don't know of anybody that advocates running this water down anybody's river, they prefer to leave it in the area.

This is what I mean by developing. I have a picture showing how the water has been damned up. This has been done with private money by three landowners. A project like this is difficult enough when three landowners are involved, but when the Federal wildlife is involved it gets to be impossible.

They have been known to stop developments like this. This concentrated body of water also has fish in it and is a haven to ducks and geese. Before this was developed it was a swampy area in the spring and by fall it would be weeds and dried out being no good for any kind of production. Now it produces bountiful crops, wildlife and even fish.

These Federal wildlife agents also have a habit of intimidating people. I received a telephone call from the Army Corps of Engineers about a dike that has been in place for 50 years. I have a picture No. 2 that shows this dike, backing up water. In my opinion they have singled me out because of my outspoken opposition to their easement program. This may sound like sour grapes but I know of numerous other structures that have been built more recently and have no permit but they have chosen not to bother them. Needless to say my answer to their harassment was, "I don't need your permit."

These are just a few of the problems people encounter. Several people have told me they fear to speak out against the system because of the fear of retaliation.

I say Amen to what President Reagan said about the environmentalists, that they will not be satisfied until the White House looks like a birdhouse.

I have often wondered if they have thought about how slippery it would get in New York or even Aberdeen if we all rode either a horse or camel.

Leaving you with these thoughts, I hope that you will do everything in your power to stop the funding for the easement buying program.

Senator ABDNOR. Mr. Sanders.

STATEMENT OF ROBERT D. SANDERS, GARRETSON, S. DAK.

Mr. SANDERS. Senators, good afternoon. I'm Bob Sanders from Garretson, S. Dak. I'm a printer by occupation, a duck hunter by preoccupation.

I would like to thank you for allowing me to briefly speak today, although I will add little that testimony by others has not covered.

I can only share a personal observation on the unlimited value of our Nation's dwindling wetland resource.

One of the most memorable moments of my adult life, and one of the most personally rewarding, happened a few years ago when my young son shot his first duck. It was just a little drake bluewing teal, not much of a duck by some standards, only a few ounces of feathers, but by the look on his face, and the sense of accomplishment I could tell he felt, it could have been a full-blown giant Canadian goose.

That indelible moment was possible because the good Lord put the marsh, and the duck, and the boy together at the same time in the proper situation, just as He has placed all things in their proper location.

One of my fondest hopes is to be able to share in a similar moment with a grandson, if I'm fortunate enough to have one. And if my health and resources allow me to participate in the great recreational pleasure waterfowl give.

But one of my most dreaded fears is that the moment may never come if there is no marsh, and therefore no ducks, because we have drained, filled and plowed or paved the last wetland.

Won't our very souls be diminished if we allow such a situation to occur? I believe that the legislation being studied at this hearing, Senate bill 1329, is a positive, appropriate and necessary step

we must take to guarantee for the future the extremely valuable portion of our heritage that wetlands represent. It's by no means perfect as nothing done by man can be. But it is definitely far superior to any other legislation which has been proposed.

Again, I thank you for this opportunity.

Senator ABDNOR. Thank you.

Senator CHAFEE. I want to thank all of the panel. You were not all in complete agreement, but that's why we invited you here, or Senator Abdnor did. And by the way I want to take this opportunity to commend Senator Abdnor and his staff for assembling such excellent witnesses. I think we have a broad range of views. Everybody is not singing the same song and obviously that's what we want to hear. We want to know the divergencies. I have been impressed with what everybody has to say.

I want to single out Jim Stiegelmeier for his thoughts and not necessarily because they are on one side. I guess he's the youngest farmer we have had. How old are you, Jim?

Mr. STIEGELMEIER. Twenty-eight.

Senator CHAFEE. He's the youngest farmer that has appeared before us and has had some interesting experiences around the world. That aspect of your having seen the Philippines and New Zealand and how that relates to your thoughts now as you turn home and farm with your brother and your father. It's very, very helpful to us to hear these things.

Mr. Tvinnerheim, your thoughts and the accusations against the Fish and Wildlife Service were a little tough. I would hate to think our people are involved in fraud, but I won't get Mr. Buterbaugh to respond to that.

Mr. BUTERBAUGH. I would like to.

Senator CHAFEE. Maybe he would like to. Pretty tough accusations.

Mr. BUTERBAUGH. I'll respond to that first. I periodically hear reports of things like this having happened in the past. To the best of my information we can't substantiate that, but keep in mind we have easement with 19,000 people and I don't think you would expect—there would be some misunderstanding along the way, intentional or otherwise.

I'll just assure you the we'll bend over backwards to make sure that there will be no misunderstandings on anybody's part on what they have gone into. Again, we want willing sellers and we are not just going to pick on the oldest people that are willing sellers. It's a cross section and we are going to bend over backwards that there is clearly no misunderstanding on a part of the people taking the easement. I don't think in the past that that has been a large percentage that that has happened to. There were a lot of easements taken in a short period of time and maybe not as much effort put in explaining it to the people of what was happening, but clearly it's been tested in court and it's a legal document and it's unfortunate that that has happened.

Mr. TVINNEREIM. Could I respond?

Senator ABDNOR. By all means, Mr. Tvinnerheim.

Mr. TVINNEREIM. I realize that I have no proof of this, but I do know this. I live in the best slough area in Day County, you might say. And you gentlemen have never been on my place.

Mr. BUTERBAUGH. Has there been a need?

Mr. TVINNEREIM. I have some of the best slough area in the area. If you are interested, I don't understand why you haven't approached me.

Mr. BUTERBAUGH. You have an easement?

Mr. TVINNEREIM. I haven't an easement on anything I own or operate. And it's not no accident that I haven't got any. It's because I'm on the ball.

Mr. BUTERBAUGH. I'm not sure I know what you feel we should do.

Mr. TVINNEREIM. Most of these people were approached because you indicated an interest in easements, in paying the easement.

Senator CHAFEE. Maybe the word got out about your position.

Mr. TVINNEREIM. Well, you took the words right out of my mouth.

Mr. BUTERBAUGH. But I might make one other comment.

Senator CHAFEE. Go ahead, sir.

Mr. TVINNEREIM. And for example I have got a 96-year-old mother and she isn't in her right mind and honest to God I could convince a person like that if I come dressed in a uniform and all the rest of it, I could convince her to do almost anything I chose her to do and we all realize this and we should. We have had comments today about a fellow that isn't very sharp if he signs or buys land and doesn't investigate all the legal angles. But I'll give you a clue, I could talk about farming to someone who doesn't know anything about farming and I could confuse you and I could sound intelligent, but you wouldn't know a thing that I said. We are all stupid. We are just stupid in different subjects. So I resent anybody saying that, well, he won't be in business very long if you don't—we are not all lawyers. Although some of us do probably do a pretty good job of being one.

Senator Chaffee. Thank you.

Mr. BUTERBAUGH. Could I make a comment on it? There was a discussion of noxious weeds that you were talking about a State program. I would like to mention on the Federal level we recognize our responsibilities to a landowner in the Dakotas and in maintaining and destroying weeds. We spend considerable amounts of money in the vicinity of over \$100,000 a year in killing the weeds and contracts with the South Dakota county boards and we are very sensitive to that issue and the number of complaints against the Federal Government has gone down drastically in South Dakota because of this we have done a better job in controlling weeds.

Mr. RUSSELL. Yes, sir, but were you in the State lands in the last week of July spraying?

Mr. BUTERBAUGH. I'm Federal, not State. So I can't speak to that.

Mr. RUSSELL. It's on land being sprayed and not one dime's worth of good doing it, and it has poisoned our water supply in the gravel water aquifer 40 feet thick in my well. It was 20 feet through topsoil and 40 feet of gravel and that gravel is saturated with poisons coming from above in that area of the game, fish and parks water, I mean wetlands. And another place west of us is contaminated by putting the anhydrous ammonia right in the water and the man has had to quit raising hogs because the pigs did die. That's over a

period of about 15 years. And that contaminated water is killing those pigs and the human body is nearest to the hogs' metabolism. Thank you. Thank you, Senators. Thank you very much.

Senator ABDNOR. You're welcome. I was just hoping Mr. Merwin was still here. Maybe someone from the game and fish is here.

Mr. TURNER. We'll bring it to their attention.

Senator ABDNOR. The next witnesses are Richard Burghardt, Raymond Henning, Tom Klinkel, and Robert Perry.

DICK DOUBRAVA. Tom left. We have his testimony.

Senator ABDNOR. Robert Perry and Dave Prieb. Would you gentlemen come forward?

Senator CHAFFEE. OK, Mr. Burghardt? I guess Mr. Burghardt is not here. Mr. Henning, why don't you take that mike.

STATEMENT OF RAYMOND HENNING, FARMER, DAY COUNTY,
S. DAK.

Mr. HENNING. OK. Well, I have got a couple of issues I would like to comment or testify on. I think you realize up to now most everyone that testified they brought out the good in the ducks and geese and wildlife, which I'm all for too, but this year especially or years in drought or dry years, we got other problems too.

Now these wetlands and so on, out in my area, where I come from, my name is Raymond Henning, and from Day County, S.D., northeastern Day County, prime wetlands or pothole area too. And right now the country is literally covered with blackbirds and animals and rodents and so on. Nothing is being done for it or of course I should be out combining now, but I thought that this was more important because the blackbirds, when there is enough of them they will eat up the grain as the ducks or the game do.

And listening to all these comments, especially from these organizations in these wetlands are worth so much and produce so much revenue, then I believe that the farmer should be compensated for in accordance whatever they produce. Just like a grain field or whatever. If they are worth so much, which they probably are.

It's a little bit different when you are a landowner and you have the problems that you heard or have heard before, I have boughten land that is in easements too and I have nothing against easements, whoever wants to sell, although over in Day County they are so thick that I would just say this, the willing landowner that wants to get rid of this should let it go and if there are so many of them waiting for an easement, let one of them take over on his land because they do create a problem.

I have land 3 miles away that is not a pothole, not a slough, just a wet spot, but the right conditions then, and I have to make two or three trips with different machinery to cover a quarter or an acre because I can't use I suppose a plow, a little furrow to drain it because it's a wetland.

Now, I understood that's some of the people's argument that the whole farm or quarter or 40 acres is in wetland easements when one speaker said it's only the slough. It's not that. It's really the whole quarter of the whole amount of land as I understood it.

When I bought it I knew it was under easement because I didn't read the fine print because I would be reading it yet but it says if

you know something is wrong or illegal or whatever, they have full rights to go right through your grain and whatever and see what's going on, which in my case would be no problem, I'm not doing nothing wrong, but that is what the reports read.

And I should probably—Mr. Tvinnereim mentioned something here when he was here. I have to agree with him 100 percent when the easements were first being taken, some of the people out there where I live, and other places, they didn't know what that word perpetual easement meant. And that's an honest truth. They approached me of course and I didn't sign up for an easement because I—and they were not just a little forward, they were a little sly until I asked them straight out if it's for every year, and they said no, it's for ever if someone buys your land it goes with it. And no I wouldn't sell them any easement which I didn't.

I think that's wrong. Easements should go with the sale of the land.

Very quickly. I could sit here all afternoon. But very quickly I'll switch over to another issue about this raising of the Federal wildlife stamp. In my judgment the farmer does enough. Not because I'm a farmer but in 1980 I started combining barley then we got bad weather, it was a late fall, and after the weather cleared up and I was back combining, it quit, I think the ducks, they came from Rhode Island or wherever, all over, and they cleaned it up. I'll give the Fish and Wildlife credit there is enough of them. That is why like Jack Merwin said, too big of a concentration. It's mostly concentrated in the three or four counties and if we have wet years, sometimes I might be stretching it a bit, but you won't see the sunset.

Now, how long does it take them to eat this out? I know for certain from the barley I combined before and after the ducks were done with it, \$500 went down on the table. The following year I was a little luckier, the Government gave me disaster. That's how bad they were. But this disaster is your money, is people's money, the tax money.

How many wetlands or plots or whatever you want to call them would be able to support it. You know, I know this from experience, if you bought all this area from where I live to probably into Minnesota, you are not going to have the ducks you will have if you have a farmer mixed in between to raise them some grain and so on. They like something else. I'm a—I like to save things, put it that way.

I was plowing once and there was a late spring, 7 nests on 20 acres. Five I saved. I might have been cutting my own throat for the fall for raising more ducks.

And now the same things that we get back to the Federal wildlife stamp. We are going to pay extra money for the wildlife stamp to buy more easements or whatever land you want to buy, and raise more ducks, and we are going to lose more on grain where we have enough of this land so I think both or all the programs are OK if they were administered right and probably got enough land as it is now.

Just like a farmer overbuying, if you don't take care of it it's no use buying if you are not going to take any more either.

I would like to touch on this one too, so much has been said by draining sloughs, the water table and so on. Let me remind you I was a pretty big boy in the 1930's and no roads to drain fields and so on, which as a lot of them have done if you drain or build a road you drain the potholes away. No sloughs drained whatsoever, no potholes, no caterpillars around even and everything was so—the ground was bone dry and you couldn't walk barefoot because that's the way we walked it was too hot and stuff.

Then when the wet years come we had too many ducks and everybody came back to normal. I believe the weather plays a big part in the whole program. You can't raise everything here and try to support the whole United States or you can't raise everything in Rhode Island and try to support South Dakota and so on. Thank you.

Senator CHAFEE. Thank you very much. I appreciate that testimony. Mr. Perry?

STATEMENT OF ROBERT PERRY, ABERDEEN, S. DAK.

Mr. PERRY. My name is Robert Perry and I live in Aberdeen, S. Dak. Senator Abdnor and Senator Chafee, I thank you for the opportunity to testify. I will not read a prepared script.

About the year 1864 the Federal Government decided to build a fort in the area and they didn't build it where they wanted to because there was no place to build. Jorn Clowney moved it out 75 miles east of Aberdeen because the area was completely covered with glacial lakes and the waters were teeming with fish and wildfowl and they had protection from the Indians who were in the area. This is where they built it.

Today, they are not teeming with fish. There are a couple of holes in there where you can taste some water but 90 percent of the area is bone dry. In that same area, we have a lake called Roy Lake. It is one of the largest lakes in the State and it has two State parks on the lake. And now it's at least 7 feet down from the original border.

In Aberdeen in the 1880's the railroad drilled a well and had so much pressure when they did it, it flooded the whole area, and they got it stopped and when they got it stopped in order to use it they had to put two water wheels on it to slow the water pressure down and by the 1930's the water pressure wasn't any more and so they had to go to another source of water.

The thing that bothers me just a little bit is that 10,000 years ago we had glaciers all over the place and had water everywhere and our aquifers were filled up. We have been farming and living in this area for the last 100 years and look what we have done to it altogether.

What in effect are we going to have in the next 50 years to 100 years for the people if we don't take some land and secure them because I believe that anything or anybody would agree that the water you get in your aquifers have come from on top of the ground from one place or another and we definitely need as many sloughs or lakes or remaining dams to hold water on top so we can get the aquifers to recharge. Because wherever you go where you had water a few years ago in the well, the wells had to be redrilled

and drilled deeper in order to get water. I thank you for my being able to testify.

Senator CHAFEE. Thank you very much, Mr. Perry. Mr. Prieb.

**STATEMENT OF DAVID PRIEB, FARMER, WEBSTER COUNTY,
S. DAK.**

Mr. PRIEB. My name is David Prieb and I own a farm in Day County that was homesteaded by my greatgrandmother and grandfather. I have lived on this farm all of my life except for the time serving in the Air Corps in World War II and 4 years spent at Augustana College in Sioux Falls, S. Dak.

My remarks here may be just as new to me as you. I wrote these at 2 o'clock this morning.

Senator CHAFEE. Between that fellow that got up at 4 o'clock, doesn't anybody sleep around here?

Mr. PRIEB. The proposal of buying land by the Federal Fish and Wildlife brings back memories of the 1960's when this program was very active. I think it appropriate to review some of the activities of that time.

This briefcase holds the research I did in the 1960's. A friend of mine who was active in the acquisition of lands in North Dakota told me I had more information than he did on the program. Just offhand I should say some of these remarks as you heard about some experiences in illegal representation in purchasing these lands and easements are not exaggerations. That's the reason I got involved in this. At the time my father was a commissioner of Day County and I heard of all these things and became concerned so some of these things you hear are not exaggerations. That's the reason I got interested in it.

Going on, October 4, 1961, Public Law 87-383, was passed giving the Wildlife Service a \$105 million interest-free loan to acquire land for waterfowl.

This program greatly affected Day County. We were told that many times, that our county was the prime target of this program in the United States. In fact, the figure of 16,000 acres to be purchased was mentioned quite regularly. Because of the financial impact that this would make on the county, a lot of protesting finally slowed the program to almost a halt.

My figures have not been updated since 1976, but as of that date the Department purchased 5,561.65 acres of land, in addition to the 2,718.44 in the Blue Bill Refuge for a total of 8,280.09 acres owned, plus another 89,599 in easements. In addition to that the county had 10,652 acres owned by the State game and fish. In addition to this, Day County had 15,210 acres in waterbank contracts, bringing the total acres for waterfowl production to 123,741 acres. This is in one county. In addition to that we have 24,960 acres in State owned lakes. In addition to that we have 8,336 acres of nontaxable Indian land. Needless to say, many of us in Day County feel we do not need, nor can we stand another wildlife program.

What is this all about? We are told that it is conservation of wildlife, but further study will show it is more attuned to the preservation and promotion of hunting as an industry. In 1976, a conservative estimate of the number of ducks in the United States

was 24 million. There is little chance that any specie will become extinct.

In the promotion of this industry, one fact is always ignored. This duck population does untold damage to agricultural crops with no compensation for the damage. I had a Fish and Wildlife man tell me, "the ducks had as much right as I to my crops." That's a fact. In further conversation, he stated ducks and geese were as important as people. You may say that this is just the opinion of one man in the Department, but is it? When the Wildlife Service will not give a local governing body the right to improve a very dangerous road along its property, they are really saying, ducks are more important than the lives of people. This is just one example.

Many things change with time. We can no longer shoot buffalo from trains. Because of increased population and other factors, many things we used to do can no longer be done. Hunting is a privilege, not a right, and the time may come when the only hunting of waterfowl will be with a camera. The loss of wetlands will continue as this country progresses. The day of Daniel Boone and the open range is over.

If the Wildlife Service will not change its stand, there is very little chance of irrigation in South Dakota. Their stand on mitigation had a large part to do with the killing of the Oahe project, and will kill Cendak and any other project proposed.

The Wildlife Service has never paid \$1 of that \$105 million loaned them. I don't believe they ever intended to or ever will.

Because of the nonpayment of this loan from the taxpayers; the disregard to damages done to personal property; the departure from the intent of the original purchase program; increasing pressures on agriculture, our Nation's prime industry; and the need to meet the Nation's changing priorities, I would hope this proposal for the funding of another land purchase program will be denied.

I have a few remarks. I keep hearing about the loss of wetlands. True, we have that, but on the other hand agriculture has not been given a fair shake. The U.S. Government owns one-third of the land mass of the United States—761 billion acres. The total farmland in the United States totals less than 400 million acres at the present time.

Farmland is being lost at the rate of 300,000 acres each year and while we never hear about the loss of wetlands, 1 million acres of that is lost each year because of development of ponds, lakes, and reservoirs. In 25 years according to Kiplinger, this country will have to produce just as much food in the next 25 years as we have learned to develop since the beginning of time. We have surpluses of food at the present time. But that is really short lived.

A good article I would urge everyone to read is in the last issue of U.S. News and World Report telling of the fears of shortages of food in the not too distant future.

I'm very happy, Senator Chafee, on your stand on water development. I agree completely on the development of the water tables, and this type of thing. The production of ducks for hunting purposes I feel has to be of a very low priority. Your stand on other water development admittedly has to have a high priority.

The time of Daniel Boone is over. We have to set our priorities. The people in New York and the larger cities eventually will have to have cheaper food. Thank you for your time.

Senator CHAFEE. Thank you very much. I just want to make one comment. There's been discussion here of the concern, as Mr. Prieb said, of the disappearance of farmland and what's happening in other States on the preservation of wetlands and matters like that and I think that's very important. And it's a national concern.

As you know, in Congress we are not just concerned with this, but the disappearance of the topsoil and the point you made is so valid that we have to have the production capability in the United States and the preservation of the farmland so we can feed our growing population.

You might be interested in something we are doing in my State which is a very small State, and doesn't have that much farmland itself, an industrial State. Last year in the 1982 election, on the ballot we had a bond issue for the purchase of development rights to farms. What is happening as does happen in other parts of the country, the farmer would grow older and his sons weren't interested in farming and they would sell the farm for development so we passed a bond issue which would give the State the ability to pay the farmer the difference between what his land is worth as farmland and what it's worth as development land.

And let me make an illustration. Let's say the land is worth \$2,000 an acre as farmland and it's worth \$10,000 an acre as development land. The State would then pay him \$8,000 an acre and then that land would be in perpetuity classified as farmland. It could not be used for anything else. And thus it means land available for young farmers who come along who can then afford the land. It keeps the land as farmland and not for housing or shopping centers or whatever.

Now, the hitch is of course, it's very expensive to the State to do this. So we would just get started with it and where the State is doing it is primarily where the farmer is threatened by the growth of development, which we are seeing all throughout the East. If you have been outside of Washington, south of Washington in Virginia you just see farmland disappearing as development grows up all over the place. Efforts are being made in other parts of the country to save farmland and more can be done and also to save wetlands as well.

Thank you very much.

Senator ABDNOR. Before they leave, one other gentleman that belongs in this group. Milt is a former legislator. He should have been up here. I think he's in the same category. He's a gentleman I have known for years and served in the legislature.

STATEMENT OF MILTON LAKNESS, FARMER, HAYTI, S. DAK.

Mr. LAKNESS. Senator Chafee and Senator Abdnor, thank you for spending a valuable day of your year, here in the State of South Dakota.

I can understand that and, Senator Abdnor, you must have some frustrations on scheduling meetings such as this but I mentioned I

live about 100 some miles southeast of here and I got up at 4:30 also to come up here, you see. And so there is concern in this area.

Perpetual easements are a curse to future generations in our area. They are a curse to those unborn generations. They really are. Mr. Buterbaugh, there has been henchmen-type tactics to sign up these easements. Mr. Tvinnereim, I have never met him before, but I live about 100 miles from him. In our area I think I could testify in court under oath that I would consider them very henchmen-type tactics that were used.

Mr. BUTERBAUGH. Recently?

Mr. LAKNESS. No, this is not recently because these older gentlemen are now in the grave.

Mr. BUTERBAUGH. That's the feedback I get, all 10 or 15 years ago.

Mr. LAKNESS. But understand, I'm pleading with you that this did take place. And perpetuity was not understood by these people. I think 100 years was considered probably perpetuity by some of these people.

Other gentlemen you have had here, a brigade of professional game people, of bureaucrats that didn't—I just give my—I'll tell you how I found out about the meeting. Hold that up. That's how I run across it. That all I know about this meeting. So we as farmer, we as grassroots people, we as people who are the fourth and fifth generations from homesteads, are losing some of our neighbor's ground. We didn't sign up but some of my neighbors did and they were in an unfortunate position.

One old neighbor whose name is Tommy Peterson who—and you can dig the record out, laid on the cot in the home and a single man, and those boys came in and signed him up and a lot of land in our own area and we have it now. It's unfortunate because that land didn't need to be in there.

One of these gentlemen here testified that they are waiting in line to sign up. The reason they are waiting in line Senators is because they are so economically depressed some of these people, that this is a way to get several thousands of dollars to pay off a note at the bank or one fellow said I signed up because you know what I got for that money, I got a new pickup. My son said, but would you like to sit—would you like to have your grandsons say my grandfather traded a perpetual easement to that land for that pickup that is in the trees and worn out and rusting out? It's a Judas selling out future generations for a few coins.

This is my idea, but not my idea only. The North Dakota Legislature did pass a bill a few years ago crossing up or stopping perpetual easements, isn't that right, Galen?

Mr. BUTERBAUGH. Not per se.

Mr. LAKNESS. Because you had to move into South Dakota because you were stopped in North Dakota, isn't that true?

Mr. BUTERBAUGH. At the time the lawsuit was brought by the State of North Dakota, the department on its own while being litigated, decided not to produce any. The Supreme Court decision eliminated that.

Mr. LAKNESS. South Dakota did also, but we couldn't get it by the Governor. The Governor vetoed the bill and we couldn't override the veto. Not a popular issue.

You want to conserve our land and moisture and ducks and we have been here for generations and we want to be, and need the world, and if there could be some consideration on perpetuity, I think that's a big cruz of it. We could really be friends.

Senator CHAFEE. Could I ask him something? We had that testimony from Mr. Eakins earlier, he testified that a farmer came to his house at 4:00 o'clock and gave him rather moving, I thought, list, handwritten list of reasons that he supported the easements and I guess they were somewhat the thoughts Jim Stiegelmeier spoke to earlier on.

In other words what I recall the farmer said, when it was wet and raining the crops were adequate to the non-easement territory and in the dry years or seasons he could get the hay from the slough where the dampness had been retained and here's some of the points that gentleman made. I thought they were rather telling. What do you say about that?

Mr. LAKNESS. I heard that too, and I kind of notice this area comes from about 35 miles east of me there and it was very accurate. It was very accurate. It was. But Senator, they cry drainage, draining, draining. It might be going on in the \$3 and \$4 and \$5,000 land, but it's not going on in our area. I haven't—I have been farming all my life—all my adult life and I haven't drained and there just isn't a lot of draining in the prairie pothois areas.

It doesn't pay that much but it's tying up the land, you see. I have a friend, Mr. Wendell Fenner. He can't irrigate because of it. I wish you could listen to him. He doesn't talk as long as I do. He's from Iriquois and darn it, just a good operator. He was here. Wendell, yeah, he's sitting there. I would invite you to listen to him a little bit.

Senator ABDNOR. If we have time.

Mr. LAKNESS. Thank you anyway.

I appreciate it. Milton Lakness, Hayti, South Dakota.

Mr. BUTERBAUGH. Could I comment on a couple of the statements? I believe you mentioned Fish and Wildlife had no intention to pay back the loan. We don't have the option to decide whether to pay it back. Congress, if they do not forgive the loan or offer to do something about it, it will be paid back. It's out of our control to decide that.

Mr. PRIEB. I understand that. But, there is also an attitude if it wants to be paid. If I have a date, I want to get it paid and I would insist that I pay it. Just for my own integrity and I have not—you are not required to pay it, but on the other hand, I have not heard anyone say, hey, I have a debt, I would like to pay. I think that this has been taken advantage of.

Mr. BUTERBAUGH. The principle amount has been put forward, and if they decided not to do it, fine. You also mentioned concentrating on waterfowl on the wetlands and that's the main emphasis but many other water birds are not hunted that benefit from the wetlands. It's not entirely waterfowl and hunting origin, although I agree it's been the emphasis.

Mr. PRIEB. In our area there is no place to drain the water. No tributaries or creeks because of large scale farming. Agriculture has been completely ignored on this as far as making a living.

Mr. BUTERBAUGH. Mr. Henning, you mentioned or made a comment about blackbirds. That's a major problem. Blackbirds were there and as far as we know the population has not increased but it's causing a major problem and in sunflowers and doing a lot of research in North Dakota trying to come up with a variety of sunflowers that are less susceptible to blackbirds and this is a major problem and we are recognizing that and we'll try to do as much as we can.

Mr. HENNING. I think you would have to exterminate some of them. Too many of them.

Mr. BUTERBAUGH. That's a last resort.

Mr. HENNING. What's more important, the people or the blackbirds? Easy to sit and talk for the various organizations here from the wildlife and so on, but how much of their paycheck would they give up at the end of the month that we are giving up every day? Look at it from that viewpoint and that will probably explain it.

Mr. BUTERBAUGH. The answer isn't to come out and kill every animal that comes on your property. There are other ways we do it.

Mr. HENNING. When these ducks were coming in my barley I got told you can come and shoot it but not take it to eat. What idiot is that supposed to be?

Mr. BUTERBAUGH. Waterfowl degradation is another problem. Call us as soon as you have a problem and will come out.

Mr. HENNING. I would like you to change that word degradation. It's too nice a word. Change it to destroy.

Mr. BUTERBAUGH. You also mentioned easement documents are too long to read. I think it's less than 2 pages. And not that difficult as far as I know. I haven't seen one lately. You mentioned the access. That is a part of the easement. We have a right to go in and look at these easements that we have taken. As far as I know we rarely do it and usually are flying over and I'm unaware where we have destroyed that.

Mr. HENNING. When you are caught for time and you are not going to read the fine print—

Mr. BUTERBAUGH. There is nothing hidden in there.

Mr. HENNING. I didn't know you were entitled to go in any time you wanted to and I think this is almost getting to be a battle, one party fighting the other and there is lines to be drawn and room for compromise on both sides.

Mr. BUTERBAUGH. I agree. Good point.

Senator ABDNOR. We agree. Thank you very much for coming. This is the last group. Dave Whipple of the Fergus Falls, Minn., Fish and Game Club; Mr. Joe Montonye, Grant County, Minn., Sportsman Association; and Jim Rylander.

You have been very patient and we appreciate it. We are getting near the end here. And we have to get him on an airplane, and I want to tell you that this gentleman has been sitting here since 9:30. That's tougher treatment than he gets in Washington. Usually we get a break.

Senator CHAFEE. These audiences are good. Everybody in South Dakota gets up at 4:00 o'clock as best as I can figure out. But you have all come a long way and been very patient and it's been a very, very good year and I look forward to hearing from your neighboring state here, Minnesota.

**STATEMENT OF DAVID WHIPPLE, PRESIDENT, FERGUS FALLS,
MINN., FISH AND GAME CLUB**

Mr. WHIPPLE. Thank you, Senator Abdnor and Senator Chaffee, and I wish to thank you for giving us the opportunity to come here.

My name is Dave Whipple, president of the Fergus Falls Fish and Game Club, and I represent them.

I welcome your invitation to be brief. I summarized what my colleagues have written for me and I shall summarize on my summary.

Generally we are for all provisions in Bill 1329, Extension of the Wetlands Loan Act. Raising the duck stamp fee from \$7.50 to \$15 on a gradual basis, and issuance of fees for entrance or use of national wildlife refuge land, that is not a big consequence in our area as they are not—or they do not lend themselves to collection of fees.

And on the subject of making land and water conservation funds available to the States in the form of grants, makes sense to us. This might encourage states not now active in the wetlands conservation to join in.

I do have a few personal comments. One area which I do disagree with your bill is on forgiveness of the loan which is in the neighborhood of \$153 million. It's been said many times that duck stamp dollars are paying for wetlands and I can't look myself in the mirror if all of a sudden it was forgiven and all of the people I told that all of a sudden that that statement wasn't true. It's an obligation we made and I feel we should live up to it. I would like to see a little more attention to tax incentives in the future.

The Minnesota Waterfowl Association has a figure of 88 percent of the wetlands have been drained since the turn of the century. I'm an officer in a local chapter of the Minnesota Waterfowl Association and we do a lot of work reclaiming wetlands. Most of the time at no cost to the landowner. We like to attach a 10- to 25-year limit on leaving it as it is but that is 100 percent negotiable.

I would like to thank you both for letting me come and to hear our thoughts and opinions. Thank you.

Senator ABDNOR. Thank you.

**STATEMENT OF GARY PETERSON, PRESIDENT, GRANT COUNTY
SPORTSMEN ASSOCIATION**

Mr. PETERSON. Thank you, Senator Abdnor and Senator Chaffee. I'm not Joe Montonye in which the list says there. I'm Gary Peterson, replacing Joe Montonye. I represent the Grant County Sportsmen's Club. I'm from Hoffman, Minn. Grant County, Minn. is located in the west-central part of the State.

I'm not going to read my prepared statement. But there is a couple of comments I would like to make. We as a sportsmen club are not just a bunch of duck hunters. We support the wetland acquisition. However, there is some things that we would like to see improved to that wetland acquisition.

Not necessarily moneys, but management, stronger management. Maybe controlled moneys for the management as to a percentage of the moneys going to the acquisition.

And another thing is to pass new upgrading of the maintenance of these Federal wetlands. In my county, a loan to Grant County

is—I think Grant County ranks about 67th or 61st in size in the State of Minnesota out of 87 counties, so you see we are a small county. And taking it off the top of my head I think we are talking about 7,300 acres of Federal lands and 3,500 acres of State-owned land in Grant County so I would like to have you think how many acres, how much wetland acquisition you need in one area.

I think it's a point that strongly you need to look at. And I don't think it's just Minnesota but all through the Dakotas as well.

I have got some other comments and the time is running short. Thank you Senators. It's a pleasure being here.

Senator ABDNOR. Thank you. Do you have a written statement?

Mr. PETERSON. Yes, I do.

Senator ABDNOR. We'll put that in.

Mr. PETERSON. Fine. Thank you.

Senator ABDNOR. Thank you.

STATEMENT OF DENNY ANDERSON, ASHBY FISH AND GAME CLUB

Mr. ANDERSON. Thank you Senator Chafee and Senator Abdnor. I'm from Grant County also. I'm Denny Anderson and I represent the Ashby Fish and Game Club and I'm taking Jim Rylander's place. We are a rural club and we would like to basically support Senator Chafee's bill and I won't go into that any further. And we would also like to thank both of you for your work in the environment and on conservation and being a rural area.

Most of the members of our club, and we are over 200, are mostly farmers. So farmers can be conservationists and work in that way and I think we would like to see you address the problems of the perpetual easements and the taxes in-lieu or payment in-lieu of taxes and along with the support of your bill. Thank you.

Senator ABDNOR. Mr. Anderson, do you see the perpetual easements quite a subject up in Minnesota?

Mr. ANDERSON. Well, in our area the farmers I talked to, the perpetual easement is not a big problem as I'm involved in local government, township government, and payment in-lieu of taxes seems to be a touchier subject in that area.

Most of the farmers who have gone into the easement program have been willing to go or willing buyers as you say and haven't had any trouble that I have heard. But the payment in-lieu of taxes, that's—in order to get the grassroots behind them you are going to have to show that this land isn't coming off the tax basis because these local governments are or every dollar counts. Thank you.

Senator CHAFEE. Could I ask Mr. Whipple a question? You mentioned reclaiming wetlands. That would be quite complicated. Give me an illustration of what you might be talking about and who puts the money into it. You indicated that perhaps your fish and game club had helped, or maybe it's the government, but no claim or no rights were made, no terms were imposed on the reclaimed wetlands as far as keeping it that way for a number of years. Could you explain briefly how that works?

Mr. WHIPPLE. Yes. That is correct. Fergus Falls Fish and Game Club, the Evansville Sportsmen Club and Viking in Alexandria,

and Grant County Sportsmen Club, all have worked with the Minnesota Waterfowl Association reclaiming drained wetlands previously tiled, ditched, however it was drained, and we find that it's actually very economical in many cases to do this. All you would do is pour some concrete down on a tile or with a tractor you can easily plug a ditch and I don't have any figures with me today but we have compiled per acre or figures and it's very economical to do it and like I say it's almost at no cost to the landowner and we rarely put many conditions on it.

Senator CHAFEE. Would a typical case be with the farmer or private landowner who is not farming it?

Mr. WHIPPLE. Both. We have got them both ways. One particular man I can remember is Jeb Idem, I don't know if he inherited or bought his farm from his father, and the whole thing is now one big duck factory. He's put the whole thing in and reclaimed it all.

Senator ABDNOR. That's interesting. I brought that up earlier today and all we would hear was how expensive it would be. I think this indicates my will to look at other parts of the country and some of the most enthusiastic support we get more and more may come from the areas that may help us work out some program in the future.

Mr. WHIPPLE. As far as the funding goes, it's all from fund raisers and donations and membership. That's all there is. No State, Federal, or county money going in. Well, once in a while, we'll get some aid from the county SCS or DNR, but not very often.

Senator CHAFEE. Thank you.

Senator ABDNOR. Thank you.

Senator CHAFEE. I appreciate you coming over.

Senator ABDNOR. The last witness is Wendell Fenner. Glad to have you. From Iroquois, S. Dak. Give your name.

STATEMENT OF WENDELL FENNER, FARMER, IROQUOIS, S. DAK.

Mr. FENNER. Wendell Fenner, Iroquois, S. Dak., southeast of Beadle County. I didn't come prepared. I didn't expect to get on the agenda.

I have a unique situation in that I brought a quarter section of land 2 years ago that had a perpetual easement on it and of course I was aware of the fact and I applied for irrigation permit after finding water and the permit was issued and then my next step was to go to Fish and Wildlife to see what results I could get from them.

It took about 3 months. They weren't very cooperative. They did issue me a permit. My only permit is too restrictive and I cannot use it. There are five restrictions and only about 2 acres of wetland involved in the 180 acres, but where the wheel tracks go through for the irrigation system has to be ditched out and filled with over-size rock. No problem. My main point is that the issue—that the permit was issued for only 10 years. Now, with investment in irrigation of probably \$60,000, approaching 75, I cannot live with a 10-year permit. The life of the system is probably 25 to 30 years. I would rather see a permit with that length of time. I would like to get in contact with Fish and Wildlife again. My permit for the State will run out in less than 4 years. I have to develop it or lose

my State permit. I would like to meet with the Fish and Wildlife to see if we could get a permit at least as long as the life expectancy of the system.

Senator ABDNOR. Care to comment?

Mr. BUTERBAUGH. Yes. In fact in talking about center pivots on the irrigation where you have a track in the boom that the wheels go through the wetland and we have been doing research on wheels, and we can accommodate that and come up with some fairly simple and inexpensive methods that are obviously when your permit is to be renegotiated. And any of you that are considering that we have a way in research we have done in Minnesota we have used a plank type of apparatus to cross the wetlands, that will get across the wetlands and won't harm the wetlands, and as far as the 10 years versus the 30, that's new to me and I can't react on that. Maybe my staff can. I can have somebody check.

I don't think we have a problem with negotiation with the permit for the length of the equipment. No problem. Just a matter of sitting down and talking, I would recommend you contact the wetlands manager and I'll do the same and tell him you are going to contract him and I don't see it as a problem.

Senator CHAFEE. There you go, Mr. Fenner. You got something out of the trip.

Mr. FENNER. Thank you.

Senator ABDNOR. That completes our hearing. I know other people would probably like to be heard and I suppose if we stayed here another 4 hours we could have, but these are people that have commitments and have come a long way. Senator, I want to say, and I want your people to know that you have all been great witnesses and we appreciate your coming. I have been around a lot of Members of Congress and this gentleman on my left is one of the most important people I have been associated with.

I'm very, very grateful that he and the staff and the committee was willing to come out and we started at 9:30 and it's almost 2, and we've got another hearing that he is going to and another meeting tonight, so it shows that politicians do like to work once in a while. I thank you.

Senator CHAFEE. Thank you, Jim, very much. I want to again say we have had a wonderful list of witnesses and everybody was prepared and did a good job and been concise.

I think you folks in South Dakota are very, very fortunate in the representation that you have in the U.S. Senate. As was mentioned earlier Larry Pressler wanted to be here and we included his testimony in the record and Larry does a very fine job for you in Washington, and I particularly want to single out Jim Abdnor. Jim is a bear for work. And maybe that's why he never got married. He's always working and carrying the banner in the U.S. Senate for you folks out here. You are very lucky to have a fine Senator as Jim Abdnor and it's been a pleasure for me to work with him in the U.S. Senate. Thank you all very much.

Senator ABDNOR. I'd be remiss if I didn't thank Galen for coming all the way out. I was very impressed, Galen, and I know many of our problems. They seem gigantic and impossible to solve, but somehow between communications and a little give and take,

brings great results and I hope this will help in that respect.
Thank you all, very, very much.

[Whereupon the hearing was adjourned.]

[Statements supplied for the record follow:]

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South Dakota Department Of
Game, Fish and Parks
South Dakota State University
Wildlife Management Institute
U.S. Fish and Wildlife Service

STATEMENT BY

RAYMOND L. LINDER

Mr. Chairman, I am Dr. Raymond L. Linder, a wildlife scientist and Leader of the South Dakota Cooperative Wildlife Research Unit located at South Dakota State University, Brookings. During the past 3 years our major research emphasis has been directed at values of prairie wetlands in South Dakota. Today I want to discuss some of the values of wetlands to our State. I also want to emphasize the importance of the diversity of wetlands found here--from the very smallest to the largest.

It is well known that wetlands are a valuable resource in the Northern Great Plains states.¹ The Prairie Pothole Region provides the backbone for duck production in North America. Also known as the "duck factory", the Prairie Pothole Region produces 50% of North America's waterfowl.

Wetlands are also important for many other species of wildlife. Over 100 species of birds are dependent upon them for their survival. Wetland basins provide habitat for deer, rabbits, and many other mammals. Acre for acre, wetlands tend to support a greater variety and number of animals than any other biological community in North America. Muskrats, ducks, leopard frogs, and crayfish depend on wetlands for their entire life cycle. Marsh hawks and herons are partially dependent on

¹Linder and Hubbard. 1982. Proceedings Great Plains Agric. Council.

wetlands for food and cover. Wetlands bordering streams serve as spawning grounds for northern pike and muskellunge. Vegetation growing along wetland edges provides safe cover for young fish. The abundant aquatic insect life associated with wetlands is an important food source for fish and ducklings. In winter, wetlands provide essential cover for deer, pheasants, muskrats, and other wildlife.

Wildlife is not the only value of the prairie wetlands. Wetlands offer opportunities for recreation such as trapping, hunting, and birdwatching. They are also important for ground water recharge, pollution abatement, flood control, nutrient recycling, and forage production.

These general values also apply to South Dakota's wetlands. I want to discuss some specific wetland values that we have measured for South Dakota.

One study found that 38 species of birds other than waterfowl used 8 South Dakota wetlands surveyed in 1980-1981 during the breeding season.² Even during a drought, wetlands provide cover for birds. In 1980, 12 species nested on one dry wetland in the central part of the state.³

²Brady. 1982. Master of Science thesis. South Dakota State University.

³Hubbard. 1982. The Prairie Naturalist.

Surveys of waterfowl in 1973 estimated that over 1 million breeding pairs of ducks were using South Dakota wetlands. Over 80% of those pairs were observed in the pothole region of eastern South Dakota at densities about 30 pairs per square mile.⁴ Even in the drought year of 1974 more than a half million breeding pairs were found. Our studies, as well as many others in the prairie pothole region have demonstrated that a diversity of wetland types is necessary to maintain wildlife.⁵ Each species of animal requires specific conditions in which to live. Some species use only one wetland type; however, most need a number of types. Waterfowl is an example of a species that needs many types of wetlands through the year. When migrating waterfowl return to the nesting areas in the spring, the females require high quality foods such as insects to maintain high levels of egg production. Research over the years has shown that nutritious foods are found in small shallow wetlands during the early nesting season. The surface water of those temporary and seasonal wetlands warms up very early in the spring. This warm water provides an early crop of aquatic insects--an essential food source for egg-laying ducks. As

⁴Brewster et al. 1976. The Journal of Wildlife Management

⁵Weller and Spatcher. 1965. Iowa Agric. Home Econ. Exp. Sta. Spec. Report No. 43

the temporary and seasonal wetlands dry up, ducks such as the mallard, pintail, and teal, shift to more permanently wet potholes and lakes for feeding. Broods, too, need more permanent water to find protection from predators and to obtain adequate food.

Our studies in South Dakota show the importance of wetland cover to pheasants for over winter survival.⁶ Wisconsin found the same thing. In Wisconsin's prime pheasant range, 80 to 90% of the wintering pheasants were associated with wetlands. A study of white-tailed deer in eastern South Dakota during the 1960s found that wetlands were extremely important to those populations.⁷ Of course many furbearers rely upon South Dakota wetlands. Without prairie wetlands in eastern South Dakota, muskrat and mink populations would be only a fraction of what they are now.

As I mentioned earlier South Dakota wetlands have many values other than for wildlife. We have studied use of wetlands by South Dakotans for recreation.⁸ A survey of 6 wetlands in eastern South Dakota showed that over 10,000 people made almost 5,000 trips and spent 63,000 hours on those 6 wetlands from

⁶Sather and Linder. 1980. Proc. South Dakota Academy of Sciences.

⁷Sparrowe. 1966. Master of Science thesis, South Dakota State University.

⁸Thompson. 1983. Master of Science thesis, South Dakota State University.

August 1981 to August 1982. Ninety percent of the visits were for hunting. The wetlands were also used for trapping and 17 nonconsumptive activities; that is activities such as birdwatching, snowmobiling, photography, and canoeing.

In another study on recreational use of wetlands, preliminary information is now available.⁹ In that study, a questionnaire was mailed to 1% of the resident 1982 fish and game license holders in each county in South Dakota. One thousand fifty-three questionnaires were completed and returned. Of the residents who hunted in 1982, 82% or about 120,000 South Dakotans used wetlands at least once during the season. About half of the hunting was on public wetlands. They spent an average of about 20 days per hunter. This expands into almost 2.5 million man-days of wetland use by South Dakota hunters in 1982. The estimated expenditure per hunter was \$206 in 1982 or a total direct expenditure of \$24 million of wetland related hunting. This total does not include expenditures by non-resident hunters. Preliminary analysis indicates a value, discounted at 7.85%, of \$338/wetland acre for hunting alone.

We have done little as yet to measure other values of a prairie wetland to South Dakotans. We did, however, measure water retained in small wetlands on a 1,550 acre tract of public

⁹Johnson. 1983. Master of Science thesis. In preparation.

land in Grant and Roberts counties.¹⁰ We measured surface area of the 212 small wetlands on that area and volume of water they contained after the spring snowmelt in April 1982. These wetlands averaged 0.7 of an acre in surface area and accounted for 49% of the total water surface area on the land tract (wetlands larger than 7 acres were not measured for volume). These 212 small wetlands contained 158 acre/feet of water or over 50 million gallons. It seems logical that these small wetlands reduced downstream flow and--potential flooding. Also, water in those small wetlands was important for ground water recharge. Modeling studies and observational studies have shown that in the relatively impervious glacial till deposits of the prairie pothole region, precipitation rarely percolates to the water table on upland sites, but filtrates to the water table only where water is ponded on the soil.^{11,12}

A value of wetlands to the landowner that is usually overlooked is forage. We have started a research project supported by South Dakota Department of Game, Fish and Parks to measure these values, but information is not yet available. In North Dakota estimates of from 4 to 8 tons of hay/acre may

¹⁰Hubbard and Linder. Manuscript in preparation.

¹¹Freeze and Banner. 1970. Water Resources Research.

¹²Malo. 1975. Ph.D. Dissertation. North Dakota State University.

be produced, depending upon the part of the wetland mowed. In 1980, wetland hay sold for about \$30/ton or a yeild of \$120 to \$240 per acre there. Some long-term studies reported that in North Dakota an average of 75% of all wetland 'asins can be hayed in normal precipitation years and 95-100% of them can be hayed in below-normal or drought years.¹³ Our studies will include measurement of effects of haying on wildlife using the wetlands.

Trapping for furbearers is another important resource to the economy of South Dakota. South Dakota furbuyers paid \$2.4 million to South Dakota trappers in the 1980-81 season. Furs sold to out-of-state dealers were not included in this total. Much of this return was to the landowner trapping in wetlands on his own property.

Another important aspect of our current studies is our involvement in the National Wetland's Inventory. It appears from areas identified in North Dakota and Minnesota that current wetland losses are continuing to occur at an alarming rate.¹⁴ Photo-interpretation will begin in South Dakota in October 1983 providing information regarding the number and condition of wetlands in this state.

I want to conclude by again stating that wetlands have a tremendous value to South Dakotans now and in the future. Furthermore a great diversity of wetland types, from the smallest to the largest, is imperative to maintaining our wildlife resources and for the other important functions provided by wetlands.

¹³ Higgins, et al. 1983. Wetlands Extension Packet. In preparation.

¹⁴ Frayer, et al. 1983. Status and trends of wetlands and deep water habitats in the conterminous United States, 1950's to 1970's.



Wildlife Management Institute

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PLEASE REPLY TO:
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Northcentral Representative
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Statement of Keith W. Harmon
before the
Senate Subcommittee on Environmental Pollution
at
Aberdeen, South Dakota
on
August 10, 1983

Mr. Chairman:

I am Keith W. Harmon, Northcentral Field Representative for the Wildlife Management Institute. The Northcentral region includes the Prairie Pothole states of Minnesota and North and South Dakota.

The record on wetland losses in the prairies is well known. Briefly they are: more than one-half the wetlands were drained by 1950. From 1950 to the 1970's, annual losses of the nation's inland wetlands averaged 439,000 acres. The greatest loss of such wetlands in the northern portion of the Mississippi Flyway are in Minnesota. In the northern regions of the Central Flyway, the largest losses are occurring in North and South Dakota. There is no indication that these losses are abating.

The economic system under which we operate insures that it is economically profitable for the landowner to drain wetlands. When that is the case, but the public benefits from retaining wetlands, it is essential that government provide the landowner with an alternative to drainage. The U.S. Fish and Wildlife Service's small wetland program is the only alternative available in the prairie, and has been for more than 20 years.

DEDICATED TO WILDLIFE SINCE 1911

One might argue that the states can protect wetlands. Unfortunately, the record is clear that state government -- particularly in North and South Dakota -- have never assumed this responsibility. When national wetland goals were established in the mid-50's, the state's share was 4.5 million acres of which they already controlled 2.0 million acres. As nearly as can be determined, the states have collectively acquired only 17 percent of their 2.5 million acre obligation during the past 20 years. At the present rate, we might optimistically expect the states to fulfill their wetland acreage goal in 629 years. North and South Dakota might take somewhat longer.

On the other hand, state funding is routinely made available for drainage projects. North Dakota, in its state water plan, proposes to construct 212 miles of channelization in the Devils Lake Basin at an estimated state cost of nearly \$29 million. At stake in this proposal are more than 400,000 acres of wetlands. North Dakota, who has repeatedly attempted to halt the federal small wetland program and has since 1977, suggests in the state water plan that incentives for wetland protection be provided by the federal and state Water Bank programs rather than the Fish and Wildlife Service's program.

In reality, this is similar to no program. The federal Water Bank program between 1972 and 1979 averaged 28,000 acres of wetlands under contract in North Dakota at an average annual cost of \$340,000. This is just 7 percent of the wetland acres that could be drained by 212 miles of state financed ditches in the Devils Lake Basin. As for the recently authorized state Water Bank, the mathematics are much easier. To date, there has not been a single dime appropriated or a single wetland acre protected, nor is there likely to be.

Some contend that the Fish and Wildlife Service's wetland program has hindered full economic development in the Prairie Pothole states. Collectively Minnesota and the Dakotas encompass 148 million acres of which

approximately 111 million acres are cropland or tame-grass pasture. The Service's goal of 2.4 million acres in those three states would involve 1.6 percent of the total land area, most of which is not cropland. Interestingly enough, preliminary figures for USDA's Payment-in-Kind program show over 15 million acres of wheat and feed grain land out of production in 1983 in Minnesota and the Dakotas -- nearly 6 times the wetland acreage proposed for protection. These figures hardly support the contention that some have the objective of declaring the Prairie Pothole states a wildlife preserve.

Likewise, the contention that wetland protection keeps the states in the category of "lowest per capita income" is not defensible. There are other economic measures. For example, while having a "low per capita income, North Dakota also has the highest number of millionaires per capita of any state. As a personal aside, my father-in-law is a retired dry-land farmer from Wauby, South Dakota. They maintain a summer lake home in South Dakota and a winter home in Arizona. During this past year, they made several trips to Mexico, spent 3 weeks in Hawaii and a leaving for a month in Europe before returning to Arizona for the winter. My father retired after 40 years in the Gary, Indiana steel mills, an area of high per capita income, with a modest pension and social security and has no financial resources for spending winters in a warmer climate or foreign travel.

An often heard reason for opposition to wetland protection is the loss of tax revenue. On the average, this is not supported by fact. A 1979 study in Minnesota by the Upper Minnesota Valley Regional Development Commission concluded that "If all federally held wildlife lands in the region are treated as a whole, local units of government collectively receive considerably more revenue with these lands in public ownership than would be the case if these lands were on local tax rolls." It is true, however, that in recent years the

National Wildlife Refuge Fund has had periodic shortfalls so that 100 percent of in-lieu-of taxes has not always been possible. In several cases, Congress made additional funds Available. While there is nothing in law that requires full in-lieu-of tax payments if the fund is short, the Wildlife Management Institute believes the Congress should insure that they are made with additional funding when needed.

As a concluding point, the Fish and Wildlife Service's wetland program has been criticized for causing problems in the Garrison and Oahe irrigation projects. By law, when such projects are proposed, the Fish and Wildlife Service and the state fish and wildlife agencies must determine the wildlife losses and make recommendations for mitigation. The construction agency, also by law, is free to select those recommendations which they decide are feasible. Congress then accepts the construction agency's plan with or without mitigation. The Service only recommends, it is not their mitigation. It is mitigation directed by Congress to be carried out by the Bureau of Reclamation. Also, that mitigation has no relationship to the Service's small wetland program, either now or in the past.

The Wildlife Management Institute supports fully the small wetland program and its extension with expanded funding. Listening to only one side gives the impression of widespread opposition. The other side is that, during the 20+ years the program has been operating, 19,782 landowners have voluntarily entered into easement agreements to protect wetlands. Equally important is the fact that even today another 400 to 500 sign such agreements each year. In North Dakota, where the state has stalled the program for 6 years, there is a list of more than 100 landowners asking to be made an offer. The Institute believes that this is the true measure of the programs acceptability. It is by this standard sound, acceptable and the only alternative to drainage.

Statement of
The South Dakota Division
Izaak Walton League of America
before the
Subcommittee on Environmental Pollution
of the
Senate Environment and Public Works Committee
by
Wynn Eakins
Governor, Region III, IWLA
and Director, South Dakota Division, IWLA
August 10, 1983

Mr. Chairman:

I am Wynn Eakins of Clear Lake, South Dakota. I appear here before you Gentlemen as a concerned citizen of these United States. My education includes BS and MS degrees in Wildlife Conservation and Economic Zoology, respectively. I served as a Research Director at the Biological Laboratories, Ft. Detrick, Maryland, and as Research Administrator at the Cambridge Research Laboratories, Lexington, Massachusetts.

Today I also represent the South Dakota Division, Izaak Walton League of America (IWLA). The League is a national, citizen-based conservation organization of over 50,000 members, dedicated to furthering the conservation and wise use of this nation's natural resources, its soil, water, wildlife, and air and woods. The League is one of oldest (61 years) and most respected organization in the conservation field. I formed a chapter and joined the League in 1948. Today I serve as a Regional Governor of the IWLA for Idaho, Montana, the Dakota's and Nebraska and currently serve as a Director of the South Dakota Division.

The League welcomes this opportunity to support the extension of the Wetlands Loan Act and to express full support of S. 1329, the Emergency Wetlands Resources Act of 1983, introduced by Senator Chafee.

Gentlemen, in addressing the Wetlands situation we first realize that to date, this problem has been responsible for a tremendous number of studies, reports, surveys, etc., prepared by very learned individuals of government, industry, conservation interests, and also in the academic field. In spite of studies and reports the nation's wetlands are now about half of what they were when the nation was founded.

Since 1934 the Federal government and many states have accomplished a great deal in reducing the rate of loss of our wetlands. However loss continues. South Dakota has lost 250,000 acres since the mid-50's. South Dakota has 1,296,207 acres of wetlands with 705,722 acres (about 54%) unprotected. The "wet" portion of the wetlands is 41% with the remaining portion being 80% non-crop land, 14% poor crop land, and 6% good crop land. Fee acres in the state total 266,092, FWS easement acres total 356,411. There are 6,610 easement contracts. Revenue sharing has averaged 93.27% of full for the last four years. The South Dakota Division, IWLA, supports positive action to bring the continued loss of wetlands to a stand-still. We believe S. 1329 contains valid reasons for saving the wetlands and notes the results if this action is not taken. We support the 10 year extension of the Wetlands Act together with the proposals to accomplish the goals set forth in S.1329. The proposed "Emergency Wetlands Resources Act of 1983" is forthright, thorough and acceptable as a means to reduce the continued loss of wetlands in these United States and within South Dakota. In closing I will paraphrase a part of President Lincoln's Gettysburg address:

"The world will little note nor long remember what we say here - " but - Gentlemen, the generations to come will benefit by what you hear and do here!

Thank you.

Testimony of Patrick Sieh, Bath, South Dakota
To the Senate Environment and Public Works Committee
August 10, 1983
Aberdeen, South Dakota

Senators:

Thank you for the opportunity to testify before this committee. I am pleased that you care enough about the views of South Dakotans to hold such hearings in Aberdeen.

I wish to bring to your attention three issues related to wetland acquisitions by the Federal Government, which I feel are of concern to the people of this area.

First, it is my belief that wetland acquisitions, whether in the form of outright purchases or easements, should be obtained ONLY from willing sellers at negotiated prices. There is strong sentiment in this area against condemnation of private lands for any purpose, and especially against condemnation for wildlife purposes.

My second concern has to do with local taxes. As you know federally held lands are not subject to local property taxes and as lands are removed from the private sector they are removed from the tax rolls, thereby increasing the tax burden on remaining private lands. I believe that any federal program to acquire lands for wildlife should include federal payments to the local governments in lieu of taxes that would have been generated by such lands. In short, the federal government should pay for the local tax impacts of its programs.

My final point has to do with the relationship between wetland acquisition programs and the Reclamation Act of 1902 through the U.S. Fish and Wildlife Coordination Act of 1958, which requires that the Federal government mitigate the impacts its major projects have on state wildlife resources.

It appears to me that laws passed for the alleged purpose of returning something to the states, actually result in simply

taking more away from the state by requiring the purchase of wildlife mitigation acres. While professional wildlife managers may see mitigation acres as a contribution to the state's natural resources, to us farmers whose lands are condemned and whose local taxes on other lands increase accordingly, it appears to be nothing more than another grabbing of land and livelihood under the pretense of "doing something for us".

My third suggestion is that Congress allow all federal wetland purchases in a state to count toward the mitigation requirements of the Fish and Wildlife Coordination Act of 1958, especially with respect to Reclamation projects which as a practical matter often result in a net benefit to waterfowl by creating water habitat where none existed.

Again, I thank you for the opportunity to present my views. I ask that you carry back to Congress the message that the three changes I have suggested would go a long way toward making the federal wetlands program acceptable to the people of this area.

Thank you,


Patrick Sieh



NATIONAL WILDLIFE FEDERATION

1412 Sixteenth Street, N.W., Washington, D.C. 20036 202-797-6800

STATEMENT OF THE
NATIONAL WILDLIFE FEDERATION
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION
OF THE
SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
ON
WETLANDS CONSERVATION MEASURES

ABERDEEN, SOUTH DAKOTA
10 August 1983

Submitted by:

Wayne Baron
North Central Regional Executive
National Wildlife Federation
710 Second Street, N.W.
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48th ANNUAL MEETING MARCH 15-18, 1984 Omni International Hotel, Atlanta, Georgia
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Mr. Chairman, I am Wayne Baron, North Central Regional Executive for the National Wildlife Federation. In my capacity with NWF I work with our affiliated organizations in the states of South Dakota, North Dakota, Minnesota, and Wisconsin.

I appreciate the opportunity to appear here and discuss the need for additional wetlands conservation measures in the prairie states. I also want to thank the Subcommittee, Senator Chafee, and Senator Abdnor for holding this field hearing.

NWF is the world's largest conservation-education organization. We have over 4 million members and supporters throughout the U.S. and 51 affiliated statewide and territorial organizations. We have over 45,000 members in South Dakota, North Dakota, and Minnesota.

On July 12, 1983, NWF presented testimony before your Subcommittee on S. 1329 and S. 978. I will not repeat those comments here today. However, I will attempt to enlarge on those comments and speak specifically on the problems facing wetlands protection in this region of the country.

THE PRAIRIE POTHOLE REGION

Wetlands are so important to this area and adjoining Canada that our part of the continent is often called the prairie pothole region. Waterfowl hunters have long thought of the prairie pothole region as the duck factory of the continent. These prairie pothole states annually account for 60 to 70 percent of the 10 to 12 million ducks produced in the 48 coterminous states. The area is so important for waterfowl production alone that the U.S. Fish and Wildlife Service (FWS) has made acquisition of prairie wetlands their number one acquisition priority.

But actual acquisition has not kept pace with FWS goals or with the rate of drainage. Due to ill-conceived and illegal state laws, acquisition in North Dakota has been at a complete standstill for many years. In spite of a U.S. Supreme Court decision supporting acquisition Secretary Watt has refused to seek appropriations or to spend money to acquire wetlands in North Dakota. Some wetlands have been acquired in South Dakota and Minnesota, but even here, too little is being done, too slow.

Our prairie wetlands are under terrible pressure. They are being drained at a rate of 35,000 acres per year in North Dakota, South Dakota, and Minnesota. It's estimated that the Garrison Diversion project alone will destroy 70,000 acres of prairie wetlands in North Dakota. But while such large projects are a very real threat to our wetlands base, the actions of individuals are the more insidious, long-term threat. Wetlands that were considered undrainable a few years ago are now easily drained by individual landowners who use large, powerful, 4-wheel drive tractors and other new farm machinery.

While the existence of this new equipment is an important factor in wetlands drainage the decision to drain or not to drain is often an economic decision. Unfortunately, our state and federal systems of taxation, direct and indirect assistance, and agricultural subsidy programs still encourage wetlands drainage.

INCENTIVES TO DRAIN

So long as federal tax policy provides incentives to drain wetlands through the system of investment tax credits and "conservation" deductions and credits, wetlands will be drained. Perhaps the most

obvious of these incentives is the one which allows the deduction of up to 25 percent of a landowner's gross income against taxable income for the full cost of soil and water "conservation" practices, which include "the construction, control and protection of diversion channels, drainage ditches, irrigation ditches, earthen dams, water-courses, outlets and ponds." Expenses exceeding the 25 percent allowed in any one year may be deducted in future years. Federal tax codes also allow a 10 percent deduction for capital depreciation applicable to drain tiles, and a 10 percent investment credit against federal taxes is available for the investment in drain tiles. Research in Wisconsin has shown that these special incentives can increase the net after-tax income of the landowner and mean the difference between a profitable and unprofitable land drainage project.

Direct and indirect assistance provided by federal, state, and local agencies also encourages wetlands drainage. Such efforts as construction of major drainage systems, with the Soil Conservation Services' P.L. 566 Small Watershed Projects being the prime example, result in direct drainage but these systems also encourage drainage of adjoining lands by making it economically feasible. Research in North and South Dakota has shown that even in the early stages of planning a large project landowners will intensify private drainage in anticipation of the availability of an outlet. Numerous other agency efforts ranging from state and federal highway projects to local drainage district efforts are resulting in significant wetlands loss. Assistance in planning drainage efforts is available to landowners from a variety of agencies including the Soil Conservation Service and state Extension Services. In some cases drainage may qualify for state or federal cost sharing, such as that from the

U.S.D.A.'s Agricultural Stabilization and Conservation Service. Make no mistake that existing Executive Orders (such as 11990) and a variety of laws and regulations have stopped wetlands drainage in the prairie potholes -- they have not.

Even agricultural subsidy programs help to encourage wetlands drainage. Wetland acres that are converted to cropland may increase the farm base acreage on which crop subsidy payments are made. Even the Administration's new Payment-In-Kind program appears to be encouraging wetlands drainage as farmers use their PIK payments to convert land and increase their base acreage. A variety of other programs, such as those that provide crop disaster payments and the Federal Crop Insurance Program, may encourage drainage under some conditions.

Wetlands are being drained rapidly on the prairie. The duck factory is being degraded and destroyed. But we are losing more than just ducks. Research conducted by the South Dakota Cooperative Wildlife Research Unit at South Dakota State University and the Agricultural Experiment Station at North Dakota State University has documented a broad range of other values that we humans get from the prairie potholes -- groundwater recharge, grazing land, recreation, and flood control are just a few of these values.

But the folks in the Red River Valley in northeastern North Dakota and Manitoba don't need research to see and feel what they've lost as a result of wetlands drainage. Many individual farmsteads and a number of communities in the Valley are now ringed with tall levees that are designed to keep out the increasingly common floodwaters that are due in large part to wetlands drainage. I think a lot of those folks would agree that we need to halt or reverse the loss of wetlands on the prairie.

POTENTIAL SOLUTIONS

So, what do we do about this problem? S. 1329 and the amendments NWF has proposed in earlier testimony will go a long way toward solving the problem.

It is very clear to anyone who has closely studied the problem that more money is needed for state and federal acquisition. The FWS Small Wetlands Acquisition Program should be strengthened in the prairie pothole region with a strong mandate to acquire both fee title and easement areas. Willing sellers, people who want to sell wetlands to FWS, are waiting in line, but the FWS is unable to respond because it is hampered by a lack of funds, manpower, and administrative support in the upper levels of the Interior Department. The FWS needs a large amount of money to do the job that must be done if even a small portion of the remaining prairie wetlands are to be preserved. A mechanism to increase state acquisition also should be included in any comprehensive wetlands legislation, but we firmly believe that in the prairie states only the FWS will be able to acquire the acreages that are needed. I sincerely hope that you will pass legislation that will provide the necessary funds and direct the Interior Department to actively pursue wetlands acquisition in the prairie pothole region.

I also encourage you to go the first step in eliminating the governmental incentives that now enhance wetlands drainage. No state or federal acquisition program can do enough by itself. Elimination of existing incentives to drain must accompany a strong acquisition effort. Our Washington staff has suggested mechanisms for limiting the incentives to drain and while I am not prepared to present legislative language to accomplish this I do want to stress my

support for such action and the very great need that it be done soon. Some states have already eliminated most wetland drainage by regulation but the rest of us need your help in cutting the remaining incentives out of the federal system to help us protect the wetlands in our states.

Mr. Chairman, I hope I have portrayed a sense of some urgency to you. Each day that I travel around these prairie states I see new drainage projects, crops where cattails once grew, and landscape changes that are being imposed on us a little at a time. We don't have much time left. If action is not taken soon our argument will be over. Our wetlands will be gone.

I hope that your legislation will pass in a strong form. We stand prepared to help.

I would be pleased to answer any questions you might have.

Thank you.

Testimony on Federal Wetlands Protection

Aberdeen, SD - August 10, 1983

Minnesota Chapter of the Wildlife Society

Senator Chaffe and Senator Abdnor: I thank you for the privilege of being before you today to comment on the proposed legislation for the continuation of wetland preservation efforts. My name is Grady Mann and I represent the Minnesota Chapter of the Wildlife Society. Our Society is made up largely of professionals within the field of wildlife management from the various universities in our state, as well as the state wildlife managers, some private individuals and members of the Federal government in the various natural resource fields. The Wildlife Society has a strong track record in supporting broad-based conservation efforts and offers you their wholehearted support in the efforts to extend the Wetlands Loan Act and to make efforts to fund this program through increased duck stamps, use of Land and Water Conservation Funds and to charge user fees to the individuals other than hunters who use National Wildlife Refuge lands. Specifically, our Society supports the increase in the duck stamps from \$7.50 to \$15. We urge you to accomplish this feat as expeditiously and quickly as possible. If a graduated rate increase is most effective politically, then we'll support that measure. However, we do recognize the need for an immediate increase and if that can be accomplished, we will support you.

We support the concept of user fees for National Wildlife Refuge lands other than hunting. If the duck stamp would be appropriate, we would support that and for those areas where visitor use is heavy enough to warrant special fees collected, we would support that effort. We recognize that there are many users of these wild lands and we would welcome

the share in the cost of acquiring and operating these lands by all users not just hunters.

Many people benefit from the preservation of wetlands, people who live in downstream areas from wetlands receive flood control benefits. People who use ground water for domestic, industrial and agricultural purposes reap benefits of reliable ground water recharge in the preservation of wetlands. Those who are interested in non-game wildlife and the natural beauty of the landscape reap benefits from the preservation of wetlands. We think wetlands in our part of the country are every bit as essential, beautiful and valuable as the Rocky Mountains or the California redwoods or the everglades of Florida or the beautiful scenery of the coastal areas of the Northeast. Wetlands are the vital and useful natural resource and deserve the recognition of the Congress and the people of the United States to work toward their preservation and conservation.

In the past we have funded this work by duck stamps and loans against future duck stamps. We welcome your efforts to bring in Land and Water Conservation Funds into this vital area of conservation. Through grants to the states and for direct acquisitions, using Land and Water Conservation Funds allows the general population to share in the cost to preserve wetlands. These are the people who benefit from their preservation and we welcome this effort to bring these additional funds into wetland preservation. We think its a good move and we support your efforts to do so wholeheartedly.

Another key effort that Senator Chaffe has proposed is that the Secretary of Interior report back to the Congress on the apparent conflicts of various public programs with the conservation of wetlands and preservation of wetlands. The Executive Orders for the elimination of conflicts in Federal programs is a good step. We think there are many, many conflicts where one government program is going contrary to the interests of other government programs. I think a good look at the various Federal programs and the wetlands preservation efforts will reveal to the Congress the immense conflicts in these areas. In Western Minnesota right today, I can think of a number of wetlands which were drained some time ago, made into farmland and are now retired under the U.S. Department of Agriculture's PIK program. When the agricultural conflicts were stricken from the POWDR recommendations, that reduced the major cause of wetland loss and destruction in the prairie pothole region and probably throughout the Midwest. Agricultural drainage of wetlands has been at odds with wildlife interests in the Midwest for many years. Wildlife interests would like very much to find some practical resolutions for these conflicts. The existing Federal programs for commodity price supports and acreage reductions for many years have been exactly contrary to the conservation of wetlands and indeed in many cases have accelerated wetland losses. Our tax structures provide for tax incentives to drain wetlands through a number of direct and indirect measures. This whole area of tax deduction for wetland drainage should be overhauled and instead, tax deductions and tax credits and tax breaks could be granted to private landowners for the preservation of wetlands that would complement the existing acquisition programs for the Federal government. We think that it is essential that you have your proposed review enacted and have an indepth report back to the Congress which could be shared by the public at large to resolve these conflicts

of costs for conflicting values. We believe this is a strong point in your proposed legislation and would be pleased to assist the Congress and the Secretary of Interior in attaining such information.

From purely a wildlife standpoint, we have long recognized that wetlands are too valuable to just turn our back and let them go down the drain. From other values in conservation and natural resource, industrial development and agricultural, their values are equally as great but often less recognized. In all of our future work in wetlands, be it legislation by the Congress, by management by employees of the Federal government and by information and work by private organizations such as ours, we see a great need to disseminate information about wetlands and their values and we would hope that throughout the entire process of developing a course for the future in wetland acquisition that we include in it provisions to adequately inform wetland users and the public at large with understanding for the nature and values of our wetland resources. We commend you in your efforts to bring forth this legislation and stand ready to assist you in any way that we can. Please call on us if we can help you in directing this legislation through the Congress.

Thank you very much, gentlemen.

Grady Mann



North Dakota Chapter

THE WILDLIFE SOCIETY

STATEMENT OF
THE NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY
PRESENTED AT THE PUBLIC HEARING BY
THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
ON THE FEDERAL WETLANDS PROGRAM



Aberdeen, South Dakota

August 10, 1983

My name is Gary Pearson, I am from Jamestown, North Dakota, and I represent the North Dakota Chapter of The Wildlife Society. We greatly appreciate this opportunity to testify before the Senate Environment and Public Works Committee on the federal wetlands program.

The North Dakota Chapter of The Wildlife Society is the professional organization of wildlife biologists, researchers, educators and administrators involved in the field of natural resources in North Dakota. We are a private professional society, much like a state bar or medical association. Our Chapter has been actively involved in a number of natural resource issues in North Dakota for the past twenty years, but we have focused especially on wetlands because of their importance to both wildlife and man, and because they continue to be lost at an alarming rate.

We would like to address several aspects of the federal wetlands program, including public support for the program at the national and local level, the value of wetlands, issues surrounding the program, and alternatives to the program. Our comments will draw heavily upon the U. S. Fish and Wildlife Service's Small Wetlands Acquisition Program as it has operated in North Dakota, and we feel this is entirely appropriate

Dedicated to the wise use of all natural resources

in view of the history of strong participation by North Dakota landowners in the program in the past and the potential for their continued participation in the future.

Public Support for Wetland Preservation

Few natural resource issues have enjoyed as clear a national consensus as has the preservation of wetlands. A recent nationwide poll conducted by Louis Harris and Associates and released in December, 1982, revealed that 83 percent of the people believe that it is very important to protect this country's remaining wetlands from further destruction, and 69 percent want federal wetland preservation standards made more strict.

This great public concern for wetland resources is not some new fad, but has its roots in the early part of this century with the passage of the Migratory Bird Act of 1913, the Migratory Bird Treaty Act of 1918, the Migratory Bird Conservation Act of 1929 and the Migratory Bird Hunting Stamp Act of 1934. The Congress has continued to respond to and to share this concern for wetlands by amending the Stamp Act in 1958 to provide for the acquisition of small wetlands, and by passing the Wetland Loan Act in 1961 and giving virtually unanimous approval to its extension over the last two decades.

The Congress has also responded to the continued destruction and degradation of the nation's wetlands by curtailing the subsidization of drainage by federal agricultural programs and by increasing federal jurisdiction over wetlands under federal water pollution control laws. Indeed, a half century ago the Congress recognized the frequently adverse impacts of water projects on fish and wildlife resources, and it took steps, through the Fish and Wildlife Coordination Act of 1934, to minimize those impacts.

To suggest that this long and consistent history of Congressional actions to protect wetlands does not reflect public support for wetland

preservation would not only deny our representative form of government, but it would deny political reality. Clearly, such a series of legislation on a natural resource issue could not be enacted without consistent and wide-spread public support.

This public support for wetland preservation has been further reflected in the 1973 policy statement developed by the U. S. Environmental Protection Agency and directed at protecting wetlands, and in the 1977 Presidential Executive Order requiring that wetland losses be minimized and that wetland values be preserved by federal projects.

More than 60 years ago, the United States Supreme Court recognized that the protection of migratory birds was "a national interest of very nearly the first magnitude" (Missouri v. Holland, 252 U. S. 416, 435 [1920]), and the Court again cited this first magnitude national interest in its March 7, 1983, decision affirming federal circuit and district court rulings striking down North Dakota statutes curtailing the federal wetland acquisition program (North Dakota v. United States, No. 81-773).

Although vocal opponents of wetland preservation can be found in North Dakota, just as in other states, no clearer evidence of the wide public support in North Dakota for wetland preservation is needed than the 13,000 landowners who have willingly participated in the fee and easement aspects of the Fish and Wildlife Service's Small Wetlands Acquisition Program in North Dakota since its inception. In fact, since the program was terminated in 1977 as a result of the state's unconstitutional restrictions, over 300 landowners have taken the initiative and have approached the Fish and Wildlife Service expressing their desire to participate in the federal wetlands program. Thus, landowner interest remains high despite the fact that the program has been inactive for six years.

From an economic perspective, it should be noted that the Small Wetlands

Acquisition Program may represent the best--and frequently, the only--opportunity for a landowner to realize revenue from his wetlands. The \$38 million paid to the 13,000 North Dakota landowners who have participated in the Small Wetlands Acquisition Program is an average of nearly \$3,000 each. Considering that much of this money was received prior to the high inflation rates of the late 1970s, the economic benefits to many of the landowners were substantial.

It also is important to note that, although the Small Wetlands Acquisition Program provides many public and private benefits, it is financed through the purchase of Migratory Bird Hunting Stamps, or "duck stamps," by waterfowl hunters and other conservationists, and through loans from the federal treasury to be repaid from duck stamp revenues.

Support within North Dakota for the Small Wetlands Acquisition Program is not limited to those who realize financial benefits from the program, but is wide-spread among landowners and sportsmen in the state, as is evidenced by the attached copy of a letter from the North Dakota Landowner-Sportsman Council. The League of Women Voters of North Dakota recently completed a comprehensive study of wetland issues in the state, and, as pointed out in the attached copy of its June 30, 1981, letter to the Regional Director of the Fish and Wildlife Service, subsequently released a position statement urging that recognition of wetland values in North Dakota be encouraged through a combination of state and federal programs. The League, in its June 30, 1981, letter, specifically endorsed the Small Wetlands Acquisition Program and urged its continuation.

We would like to call the Committee's particular attention to the attached copies of letters from the mayors of Fargo and Grand Forks, North Dakota, and Moorhead, Minnesota, urging continuation of the Small Wetlands Acquisition Program for its benefits in curtailing the intensification

of flooding in the Red River Valley. As Mayor Lanning of Moorhead points out, between 1969 and 1979, Moorhead and Fargo experienced flooding conditions which should have occurred only over a period of 250 years, and he cites wetland drainage as the primary reason for this flooding. It should be noted that these three mayors represent cities having a combined population of 135,000 people, a significant number when compared to North Dakota's total 1980 population of 652,000.

Finally, we would offer for the Committee's consideration the attached copy of our February 20, 1981, resolution calling for extension of the Wetland Loan Act and continuation of the Small Wetlands Acquisition Program.

Values of Wetlands

Although wetlands provide amenities enjoyed by a large segment of our population, the broad public support for wetland preservation is based on the very real and practical benefits they provide for virtually everyone.

Wetlands are important to the people of the Midwest, the nation and neighboring countries. Water in the semi-arid midwest is a critical element, and prairie wetlands and marshes are where most of this water is found in eastern North Dakota. The North Dakota state water policy requires the storage of the maximum water supplies whenever and wherever feasible, and the North Dakota Legislature has directed local water resource boards to encourage landowners to retain water on their land. Wetlands provide natural storage basins for holding water on the land.

In addition to storing water supplies, wetlands provide water purification, flood control, groundwater recharge and erosion control. They are a source of forage and water for livestock, and they provide recreational benefits from wildlife. In addition to these human benefits, wetlands are the most important wildlife habitat in North Dakota for most species of migratory birds and resident species such as deer and pheasants. Without wetlands, few game species would remain in eastern North Dakota.

The national importance of wetlands is reflected by the fact that North Dakota produces more waterfowl than any other state in the lower 48, and by the fact that in 1979 2,100,000 people, including 61,000 in North Dakota, purchased "duck stamps" for migratory waterfowl hunting and conservation. It should be noted that one person in 115 purchases a "duck stamp" nationally, but in North Dakota, the rate is one in ten--more than ten times the national average.

One out of every two adults in the country participated in outdoor activities involving fish and wildlife in 1980, and they spent nearly \$40 billion on wildlife related recreation. Although not all of these activities occurred directly on wetlands, much of the nation's fish and wildlife is directly or indirectly dependent on wetlands. Waterfowl and other birds that are dependent on North Dakota's wetlands provide enjoyment and recreation for people throughout the country and make a significant contribution to the nation's recreation industry.

Studies have shown that increased stream flows in eastern North Dakota cannot be attributed to changes in precipitation but are closely related to increases in the size of river basins resulting from wetland drainage. In the Devils Lake Basin of North Dakota, the drained and undrained wetland basins were found to have the potential to store 42 percent of a 2-year runoff and 41 percent of a 100-year runoff. Both the Red River Basin and the Devils Lake Basin have been subjected to intensive wetland drainage, and both basins have experienced increasingly frequent and severe flooding. Despite the fact that hundreds of millions of federal tax dollars have been spent on flood control projects (some admittedly designed to provide benefits to downstream states, too) in North Dakota, and despite mounting evidence that wetland drainage frequently aggravates flooding problems, North Dakota wetlands continue to be lost at a rate of some 20,000 acres per year.

It would, in most cases, be difficult to demonstrate that the public benefits of wetland drainage outweigh the public costs, especially when factors such as flooding and water quality are considered. Most wetland drainage in North Dakota is done to expand agricultural production, but, in an agricultural economy that has been characterized by overproduction and depressed commodity prices since the turn of the century, it might even be difficult to demonstrate any significant long-term private benefits from wetland drainage for agricultural purposes. It is ironic that North Dakota has the highest rate of participation in the federal Payment In Kind Program designed to take cropland out of production, and, at the same time, is draining some 20,000 acres of wetlands to put more land into crop production.

The international importance of North Dakota's wetlands extends beyond the flood control they provide on streams flowing into adjacent Canadian provinces, because migratory birds which depend on these wetlands are found throughout the Western Hemisphere and even in Siberia. North Dakota's wetlands are important breeding areas for many of these species, while others depend on these wetlands as migration staging areas where they accumulate the necessary energy and protein reserves for their trans-continental flights and for nesting. The international importance of these migratory bird resources is demonstrated by the treaties which the United States has signed with Canada (Britain), Mexico, Japan and the Soviet Union to assure their protection.

Issues Surrounding the Federal Wetlands Program

Acreage Under Federal Control

Opponents of wetland preservation frequently accuse the U. S. Fish and Wildlife Service of attempting a "federal land grab," and they usually cite incorrect and grossly exaggerated figures for the acreage under control by the Fish and Wildlife Service. For example, we frequently hear statements

such as,

"The federal government has acquired, to date, approximately 5.2 million wetland and associated upland acres by easement and fee in North Dakota."

or,

The U. S. Fish and Wildlife Service presently has 4.6 million acres in North Dakota under easement for wildlife production areas."

The truth is that the U. S. Fish and Wildlife Service has jurisdiction (fee title or easement) on only about a quarter of this acreage. The lands under Fish and Wildlife Service jurisdiction in North Dakota include:

Total acreage owned (fee title) and managed by FWS	417,055 ^{1/}
Total acreage under FWS wetland easement authority	758,937
Total acreage in FWS easement refuges (private land where hunting is restricted)	<u>66,117</u>
TOTAL	1,242,109

Little misunderstanding occurs over the acreage which the Fish and Wildlife Service owns in fee, or over the acreage in easement refuges. The discrepancy arises over the 758,937 acres of wetlands under easement, and it is the result of the manner in which the legal descriptions of the wetland easements were written. Prior to 1976, the wetlands under easement were simply described as those natural and recurring wetlands within a certain legally described parcel of land, such as a section or a quarter section. Although the easement contracts clearly state that they apply only to the wetlands within those areas, and that they restrict only the draining, filling or burning of the wetlands, some critics of the program still insist on including all of the uplands associated with the wetlands in the acreage under easement.

^{1/} Does not include 14,721 acres in the Audubon National Wildlife Refuge which is owned by the U. S. Army Corps of Engineers and is managed by the U. S. Fish and Wildlife Service.

The U. S. Supreme Court, in its March 7, 1983, decision in North Dakota v. United States, addressed the issue of the acreage under Fish and Wildlife Service wetland easements in North Dakota, and the Court noted that:

" . . . Between 1961 and 1977, Governor Guy and his successor, Governor Link, consented to the acquisition of easements covering approximately 1.5 million acres of wetlands. . . . By 1977, the Fish and Wildlife Service had obtained easements covering about half of the total wetlands acreage authorized by the consents."

The Court also noted in its decision that,

"The typical easement agreement contained a legal description of a parcel of land and imposed restrictions on all wetland areas within the parcel "now existing or subject to recurrence through natural or man-made causes," including "any enlargements of said wetland areas resulting from normal or abnormal increased water." The easements prohibit the owner from draining, filling, leveling or burning the wetlands, but permit farming and other activities whenever the wetlands "are dry of natural causes."

To shore up their claim that the easements extend to the uplands surrounding the wetlands, critics of the program cite cases where prosecution was threatened against farmers who constructed "terraces" on uplands in parcels containing wetlands under easement. What they neglect to mention is that, while the easement permits the farming of the wetlands whenever they are "dry of natural causes," these "terraces" in reality were ditches constructed to divert water from reaching the wetlands so they would go dry of unnatural causes, and they were designed deliberately to circumvent the wetland easement rather than for legitimate agricultural purposes.

Although the March 7, 1983, U. S. Supreme Court decision should have ended the debate over the acreage under Fish and Wildlife Service wetland easement in North Dakota, the proponents of wetland drainage deliberately persist in making statements such as,

"The Federal Fish and Wildlife Service has acquired easements or ownership of 5,272,080 wetlands and associated upland acres in North Dakota . . ."

which they know to be false.

We would, therefore, like to call the Committee's attention to the attached copy of a July 5, 1983, letter from the Acting Assistant Secretary for Fish and Wildlife and Parks to Mr. Homer M. Engelhorn, Manager of the Garrison Diversion Conservancy District. The letter demonstrates that the difference between the acreage under wetland easement and the total acreage of the parcels in which the easements are located had been discussed with Mr. Engelhorn and with North Dakota Governor Allen Olson in November, 1980. Unfortunately, the letter also demonstrates that, despite efforts by the U. S. Department of the Interior to provide correct information on the acreage under wetland easement in North Dakota, drainage proponents continue to disseminate patently inaccurate information.

We also are told by those who claim that the Fish and Wildlife Service controls 5.2 million acres in North Dakota that "this represents 70 percent of all the land acquired in seven states for wild waterfowl production." Of course, such statements not only are false on their face because they are based on an inaccurate acreage figure, but they neglect to mention that North Dakota has more wetland habitat important for wild waterfowl production than any other of the seven states, and they fail to consider what these other states have done to preserve their own unique natural resources. To put the matter into perspective, it may be helpful to compare the total acreage of land suitable for outdoor recreation, including wildlife habitat, in public ownership in North Dakota with that in the surrounding states of Minnesota, South Dakota and Montana, as shown in the following table:

	Federal Ownership	State Ownership	Total Public Lands	Percent of State
Montana	25,658,977	5,310,277	32,969,000	35.3
Minnesota	3,312,753	5,121,317	8,434,000	16.5
South Dakota	3,180,088	1,681,477	4,862,000	9.9
North Dakota	2,100,000	75,000	2,175,000	4.9

It should be noted that the 2.1 million acres of public outdoor recreation lands listed here for North Dakota include 1.2 million acres of National Grasslands and Public Domain, as well as other public lands where wildlife management is only incidental to other uses. If these are excluded, we find that less than 1 million acres are devoted to public wildlife lands in North Dakota.

Other states which do not have the high quality waterfowl production habitat that North Dakota does nevertheless have devoted much larger acreages to preserve their own unique natural resources. Montana has over twice as much land under National Park Service ownership in Glacier National Park alone (928,000 acres) as the Fish and Wildlife Service owns in North Dakota (417,055 acres). In Wyoming, almost 2 million acres--nearly twice the acreage under Fish and Wildlife Service ownership and easement in North Dakota--are owned by the National Park Service to preserve just Yellowstone National Park. When viewed in this broader perspective, it is evident that North Dakota has made no inordinate sacrifices in preserving important prairie wetland resources. In considering the impacts of the 1,242,109 acres under both wetland easement and fee ownership by the Fish and Wildlife Service in North Dakota, it should be noted that these lands comprise less than 3 percent of the land in the state, while 90 percent is devoted to agriculture.

It is important also to remember that the federal fee-owned Waterfowl Production Areas are not used just by ducks. Management of these areas often includes periodic farming to establish beneficial wildlife cover. Prior landowners and adjacent farmers are employed as cooperators when these areas are farmed. Haying may be permitted on selected WPAs, either for weed control or to provide livestock feed when forage is in short supply. Grazing is another use which is permitted on WPAs on a limited

basis and provides benefits to local ranchers. North Dakota is a major producer of honey and the Fish and Wildlife Service allows bee farming on many WPAs. Other activities, such as science education, wildlife photography, sightseeing, hiking and cross-country skiing, provide important non-consumptive uses of these public lands. Management also includes control of noxious weeds, and the Fish and Wildlife Service has taken an aggressive role in combatting this problem. North Dakota state officials have publicly commented on the positive efforts in weed control by the Fish and Wildlife Service. WPAs provide the familiar wildlife and hunting benefits, as well as these non-wildlife, economic and non-consumptive benefits for the people of North Dakota.

Payments in Lieu of Taxes

The Refuge Revenue Sharing Act of 1964 (16 USC 715) provides that the net receipts from the National Wildlife Refuge System are to be used to make payments in lieu of taxes to the counties in which refuges having such revenue producing activities are located. Congress then has the discretion of appropriating additional funds if the refuge receipts fall short of the full entitlement.

Over the last three years, the payments in North Dakota have been 90.6 percent, 87.5 percent and 100 percent, respectively, of the full entitlement. Although the payments in lieu of taxes have fallen short of the full entitlement in some years, in others the revenue sharing payments have exceeded the taxes which would have been paid to the counties if the same land had been in private ownership. The reason for this is that the federal lands are reappraised every five years at actual market value, while private lands frequently are appraised at less than the true current market value.

To illustrate, in 1982, when the full revenue sharing entitlement was paid, the total payment in lieu of taxes for the 417,055 acres owned in North Dakota by the Fish and Wildlife Service was \$679,117, or just under \$1.63 per acre. These 417,055 acres include approximately 285,265 acres (68.4 percent) which are classified as non-cropland and approximately 130,955 acres (31.4 percent) classified as cropland.^{2/} The state-wide average tax payment for non-cropland is \$0.95 per acre, and for cropland is \$2.92. Based on these averages, if the 417,055 acres of Fish and Wildlife Service fee title lands in North Dakota would have been in private ownership, the counties could have expected to have received \$653,391 in property taxes from these lands in 1982. As can be seen, however, the counties received \$25,726 more in revenue sharing payments than they would have received in taxes if the land had been in private ownership.

Because the purpose of payments in lieu of taxes are designed to compensate counties for taxes lost when private land goes under federal ownership, and not just to milk the federal treasury, it is important, and necessary, to consider, not just the percentage of the approved payment in lieu of taxes, but the actual number of dollars contributed to the counties from federal lands compared to the taxes which would have been received from that land if it were in private ownership.

Landowner Awareness of Wetland Easements

A complaint periodically voiced against the federal wetland easement program, especially when a landowner is cited for an easement violation, is that the landowner was unaware that the land was under a wetland easement at the time he acquired it. Although this undoubtedly is true in some cases, the easements, nevertheless, are legally recorded documents and it is the

^{2/} These averages are based on figures from five Fish and Wildlife Service wetland management districts in North Dakota.

responsibility of the purchaser to examine the abstract for encumbrances to the title before he purchases the land. Failure of the landowner to do so is no one's fault but his own.

Nevertheless, in North Dakota, the Fish and Wildlife Service consults with the State Land Department to determine when land changes ownership, and if a wetland easement is involved, the Service notifies the purchaser by certified mail, explains the easement contract and the purpose of the easement program, and offers to discuss the easement with the new owner. This procedure virtually eliminates the possibility of a landowner not knowing that his land has a wetland easement.

Perpetual Easements

A common complaint of critics of the federal wetlands program concerns the acquisition of perpetual wetland easements. We frequently are told that a landowner had sold an easement for only a few dollars per acre twenty years ago, and now that land is worth several hundred dollars per acre--or would be if it could be drained. Of course, the same thing could be said by farmers who sold their entire farms to others, or by city residents who sold houses twenty years ago. Although one may lament a past decision, no business, or government, could operate if contracts could be revoked whenever economic conditions change. A deal is a deal, and it can be evaluated only by those involved in the transaction at the time it is made.

When one is considering the preservation of the nation's migratory waterfowl resources, it is only reasonable to think in terms of perpetual protection of the necessary habitat base. Indeed, a "perpetual" easement on a wetland has no more practical effect than a 99 year easement for a pipeline or power line. In fact, should drainage of these easement wetlands ever be determined to be necessary in the national interest, the Congress has the power to vacate the contracts.

Although consideration might be given to acquiring 20 or 25 year federal wetland easements, it also should be recognized that some people might wish to assure the preservation of their wetlands in perpetuity, and the opportunity should be available to them to do so.

Wildlife Mitigation for Federal Water Development Projects

Although no rational or statutory basis exists for linking the Fish and Wildlife Service's Small Wetlands Acquisition Program with wildlife mitigation for federal water projects, too often this has been done. In North Dakota, state officials have held the federal wetlands program hostage in order to gain concessions on the Soil Conservation Service's Starkweather Watershed Project and on the Bureau of Reclamation's Garrison Diversion Unit. Regretably, rather than following its statutory mandate to protect the nations migratory bird resources, the Fish and Wildlife Service too often has acquiesced to these tactics.

In the case of the Starkweather Watershed Project, the Fish and Wildlife Service was coerced into agreeing, not only to condone the drainage of thousands of acres of prime waterfowl production habitat, but to finance the project's token wildlife mitigation measures with "duck stamp" dollars. In effect, this would have amounted to waterfowl hunters across the country subsidizing the destruction of waterfowl habitat. Fortunately, the environmental impact analysis required by the National Environmental Policy Act resulted in the Department of Agriculture abandoning the project.

In the case of the Garrison Diversion Unit, the Small Wetlands Acquisition Program has been held hostage for six years while the Fish and Wildlife Service has retreated from a biologically sound mitigation plan based on actual replacement of wetlands destroyed by the project, to a vague and mercurial proposal, developed by a state/federal

committee dominated by project proponents having no professional biological expertise, to replace only certain "habitat units" which would not ultimately have been destroyed by other factors if the project had not gotten to them first.

Proponents of wetland drainage have accused the Fish and Wildlife Service of attempting to sabotage water projects by increasing the wildlife mitigation requirements. However, under the Fish and Wildlife Coordination Act, the Fish and Wildlife Service is required to advise other federal agencies of the impacts of water projects on fish and wildlife habitats, and on measures to reduce or mitigate those impacts, but it is the Congress that ultimately determines what mitigation measures are to be implemented.

In most cases, what some charge as attempts by the Fish and Wildlife Service to increase the mitigation requirements of federal water projects is only an effort by the Service to fulfill its responsibilities under the Fish and Wildlife Coordination Act and the National Environmental Policy Act by advising federal agencies, the Congress and the public of the true impacts of federal water projects on fish and wildlife resources.

In the case of the Garrison Diversion Unit, when the project was authorized in 1965, the Congress and the public were told that the project would destroy a total of 39,533 acres of wetlands, and there was virtually no mention of adverse impacts on national wildlife refuges. When the Final Environmental Statement for the project was released by the Bureau of Reclamation in 1974, the Congress and the public were told that, as a result of the conversion of the project from gravity to sprinkler irrigation, the wetland loss would be only 26,950 acres. In both cases, the Congress and the public were assured that the wetland losses would be fully compensated, and that actual net wildlife benefits would result.

Following a reevaluation of the project by the Fish and Wildlife Service beginning in 1974, we now know that the project will destroy a total of 60,087 acres of prairie wetlands and adversely impact another 13,175 acres, as well as adversely impact a dozen national wildlife refuges, including the Sand Lake National Wildlife Refuge in South Dakota.

Thus, the problem is not the Fish and Wildlife Service attempting to increase the mitigation requirement for the project, but rather the failure to advise the Congress and the public of the full impacts of the project at the time it was authorized.

If federal water projects are not able to deliver the fish and wildlife benefits promised at the time of their authorization, then it is both appropriate and necessary that they be reevaluated by the Congress to determine whether they should proceed or if additional wildlife mitigation measures are required.

Alternatives to the Federal Wetlands Program

We recognize the current attitude within government to restrict any further federal involvement in land acquisition. Indeed, there would be no need for a federal wetlands program if wetlands were not continuing to be lost at an alarming rate. What cannot be overlooked, however, is the importance of our wetland resources and the extreme jeopardy they now face.

State or local programs have been suggested as an alternative to federal wetland preservation efforts. We would point out, however, that, in North Dakota, the state and local entities entrusted with water management responsibilities have not implemented any effective wetland preservation efforts. A Wetland Tax Credit Bill was withdrawn from the last session of the North Dakota Legislature, and the State Water Bank Program has never been funded. Statutes adopted by the 1977 Legislature restricting federal wetland acquisitions, although subsequently struck down by the courts,

prevented private landowners from selling their wetlands to the federal government. Similar statutes passed by the 1977 Legislature and continued funding restrictions imposed by the Legislature have virtually eliminated wetland and other wildlife habitat acquisition by the North Dakota Game and Fish Department

This year, the North Dakota Legislature adopted amendments to the state's Corporate Farming Law which prevent landowners from selling farm or ranch land to private, non-profit organizations which might be interested in preserving wetlands, thus eliminating still another option for the landowner who wants to preserve his wetlands.

The effect of these actions and inactions by the North Dakota Legislature has been progressively restrict the options available to landowners for preserving wetlands, and to force those landowners who want to preserve their wetlands to shoulder the full burden and the full costs of doing so. The ultimate effect, of course, is not only to encourage landowners to drain their wetlands, but to leave them with virtually no other option.

In fact, the only realistic alternative available to a North Dakota landowner to preserve his wetlands is to do it at his own expense, or hope that a federal wetland acquisition program is reinitiated in the state.

Many of the 20,000 acres of wetlands drained each year in North Dakota are drained in violation of the state's drainage laws, but there has been no substantive indication that either the State Water Commission or the county water resource boards are willing to enforce actively the existing regulations for controlling the unabated loss of the state's wetlands. Consequently, our Chapter has undertaken an effort to assist landowners and farmers who are affected by this illegal drainage but find the state and local regulatory agencies unresponsive to their problems.

That state and local action cannot be relied upon to preserve wetlands in North Dakota is further demonstrated by the release of a 1983 State Water Plan which proposes a number of projects designed solely or primarily to drain wetlands, and thus to erode further the state's diminishing wetland resources.

Conclusion

It is important to recognize that North Dakota does not exist as an island; we are dependent on the rest of the country for markets for our farm commodities and energy resources, just as the rest of the country is dependent on North Dakota for these items. It is necessary, therefore, to consider federal wetland acquisition programs not only as they may be viewed in North Dakota, but as they are viewed by people across the country and by the Congress. In this context, it is appropriate to recall again the words of the U. S. supreme Court regarding the protection of migratory birds being "a national interest of very nearly the first magnitude." It is important to remember that Congressional support for the Small Wetlands Acquisition Program has been virtually unanimous over the years. Finally, it is necessary to consider the results of the recent Louis Harris poll demonstrating overwhelming support for federal actions to protect the nation's remaining wetland resources.

It is in this broader national perspective that the federal wetlands program must be evaluated, and it is in this broader national context that it must be resolved. With the strong national interest in and support for wetland preservation, and with North Dakota's heavy dependence on federal farm and transportation programs, it would be unfortunate indeed if we were to be perceived by the national public and by the Congress as being opposed to wetland preservation through acquisitions and/or financial incentives. There is a very real danger of this occurring, however,

in view of the state's failure to implement programs to manage effectively its wetland resources. In the absence of any substantive indications that the state will implement such a program, the only alternative is an aggressive federal wetland preservation program.

The North Dakota Chapter of The Wildlife Society strongly supports continuation of the Small Wetlands Acquisition Program. The significant local support and widespread landowner participation and interest in the program confirms its sound design. Prairie wetlands are an important natural resource which must be protected and preserved. Over half already have been lost, making the remaining wetlands even more important. The local, national and international significance of prairie wetlands and the urgency of their protection constitute a mandate for their preservation. We are confident that the Congress will not retreat from its long and consistent history of support for wetland preservation, and that it will approve legislation to assure their continued protection. We are concerned, however, that effective implementation of the program could be frustrated by political tradeoffs, and that wetland preservation could be compromised as a result. Presently, the Small Wetlands Acquisition Program is free of legal entanglements, wide public support exists for the program, and funds are available, but no wetlands are being preserved in North Dakota. We would recommend, therefore, that the Congress not only continue its strong support for the program, but that it direct the the appropriate federal agencies to implement the program and to preserve the nation's wetland resources before the issue becomes moot.

We appreciate this opportunity to comment and we offer our continued assistance as wetland legislation is developed.

Thank you.

* * * * *



NORTH DAKOTA LANDOWNER-SPORTSMAN COUNCIL

2111 Lowell Avenue
Bismarck, North Dakota 58101

June 29, 1981

Mr. Don Minnich
Regional Director
U. S. Fish & Wildlife Service
P. O. Box 25486
Denver Federal Center
Denver, Colorado 80225

Dear Mr. Minnich:

The North Dakota Landowner-Sportsman Council (NDLSC) is dedicated to serve the people of North Dakota in preserving the American tradition of freedom in outdoor recreation by promoting good human relations between sportsmen and landowners (private and public).

In North Dakota over 90 percent of lands are in private ownership and increasing recreational demands from a growing outdoors-minded public has unnaturally stressed landowner-sportsmen relationships. Wherever possible, public lands play a greater and greater role in permitting our "American tradition of freedom in outdoor recreation" to be a reality.

North Dakota's Small Wetland Easement and Acquisition Program has been, as we hope will continue to be, an ecologically significant program to the welfare of North American waterfowl.



NORTH DAKOTA LANDOWNER-SPORTSMAN COUNCIL

2111 Lowell Avenue
Bismarck, North Dakota 58101

Mr. Don Minnich Page 2 June 29, 1981

But it has been even more than that because it has served the needs of people. It has served us in myriad biological ways and in as important, yet unsung, recreational ways.

The NDLSC encourages you to sustain, and even increase, the emphasis on the Small Wetland Easement and Acquisition Program in North Dakota. In so doing you make the rich benefits of this program available to people from all socio-economic backgrounds, increase the likelihood of use by more people and help balance the recreational demands of outdoors people between private and public recreational lands.

Sincerely,

Co-chairman,
Sportsman Council

TED UREMON

Co-chairman,
Landowner Council

Duane Bohrer

LEAGUE OF WOMEN VOTERS OF NORTH DAKOTA

1212 Lincoln Drive
Grand Forks, ND 58201
June 30, 1981

Donald W. Minnich, Regional Director
U. S. Fish and Wildlife Service
P. O. Box 25486
Denver Federal Center
Denver, CO 80225

Dear Mr. Minnich:

This letter is to express the support of the League of Women Voters of North Dakota for continuation of federal programs for wetlands protection and preservation. Following two years of study and discussion, our members recognize the value of wetlands as an important resource, not only for wildlife, but for their role in contributing to flood control, water quality protection, hydrologic cycles, and environmental diversity.

In its position statement released in November 1980, the League urged that recognition of wetland values in North Dakota be encouraged through a combination of state and federal programs. The North Dakota legislature recently enacted a state waterbank program, similar to USDA's waterbank, and efforts are under way to establish procedures and to secure funding for its operation. This is a significant first step and an indication of state concern for wetlands as a resource.

The national and international importance of the wetlands resource provides reason for their protection by federal programs. Since 1977 the only federal activity in this state has been through the USDA waterbank program. The Fish and Wildlife Service's small wetlands acquisition program has not been able to assure any additional wetlands protection in those four years, despite the fact that there are landowners who wish to participate in it. The League supports the right of landowners to participate in wetlands programs offered by all levels of government. Now that the courts have agreed, we believe it is appropriate for the Service to resume offering wetlands preservation programs in North Dakota.

Individual landowners in North Dakota find themselves in varying circumstances and are therefore likely to be attracted by different kinds of wetlands protection measures. Some may prefer short-term programs while others like

long-term agreements; some prefer to sell their wetlands to an agency or organization which will preserve their natural qualities. Almost all agree that an economically viable alternative to draining is essential if wetlands are to be preserved. The League believes that making a variety of programs available will increase the number of landowners who will participate and thus increase the number of wetlands that can be protected. The small wetlands acquisition program can be an important part of this approach, and we hope that it will be. We strongly urge its continuation.

Thank you.

Sincerely,



Nikki Seabloom
Chair, Wetlands Committee

cc: Lloyd Jones, Valley City Wetlands District
Donna Chalimonczyk, President, LWVND
Ruth Just, Natural Resources Chair, LWVND



JON G. LINDGREN, MAYOR

OFFICE OF THE MAYOR • CITY OF FARGO

June 26, 1981

Mr. Don Minnich, Regional Director
U.S. Fish & Wildlife Service
P.O. Box 25486
Denver Federal Center
Denver, Colorado 80225

Dear Mr. Minnich:

I am writing in regard to the Small Wetlands Program in North Dakota.

The Red River Basin has a problem of paramount significance, that being flooding within the basin. Voluntary programs, such as the Small Wetlands Program, which compensate landowners for retaining water on the land are of great benefit to the people in Fargo, North Dakota. Without efforts to retain and slow drainage water, our flooding problems will continue to mount.

As Mayor of Fargo, I support continuation of this program because of its benefits to flood control.

Sincerely,

Jon G. Lindgren
Mayor and President
Board of City Commissioners

JGL:sf

OFFICE OF MAYOR
H. C. "BUD" WESSMAN, MAYOR



City of Grand Forks

402-2ND AVENUE NORTH-BOX 1518 GRAND FORKS, NORTH DAKOTA 58201

(701) 775-8103

June 25, 1981

Mr. Don Minnich
Regional Director
U. S. Fish & Wildlife
P. O. Box 25486
Denver Federal Center
Denver, Colorado 80225

Dear Director Minnich:

It has been brought to my attention that the appellate process to the courts regarding your valuable Small Wetlands Program has been completed. As you are aware, I have long been a proponent of important programs which serve to provide valuable flood control and aquifer recharge ability. More importantly, when these programs are voluntary, such as your very valuable Small Wetlands Program, they become not only ecologically important, but politically acceptable with built in credibility for the citizens. I honestly feel that the voluntary concepts embodied in the Small Wetlands Program makes this program acceptable in North Dakota, and also makes this program one that should be funded for future use in our great state.

As you are aware, as Mayor of Grand Forks, I have had the unpleasant opportunity to review the devastation produced by inadequate water management practices in the Red River basin. I sincerely believe that the Small Wetlands Program is a valuable asset for providing natural retention of water for flood control, and also, as I indicated earlier, as an important asset for aquifer recharge.

Director Minnich, thank you for your attention to this letter, I certainly hope that you will recognize that there are people in North Dakota who feel very positive about the Small Wetlands Program of the United States Fish and Wildlife Service.

Sincerely,

H. C. "Bud" Wessman
Mayor

HCW/po

OFFICE OF THE MAYOR

MORRIS L. LANNING

Office 218-259-5401

City of
MOORHEADBox 779
Moorhead, Minnesota 56560

July 9, 1981

Don Minnich, Regional Director
U.S. Fish and Wildlife Service
Box 25486
Denver Federal Center
Denver, CO 80225

Dear Mr. Minnich:

I understand that consideration is being given to the elimination of the Small Wetlands Program. I strongly urge that this program be retained by the Federal Government.

The Red River Valley of Minnesota and North Dakota has experienced an ever-increasing flooding problem. In fact, between the years 1969 and 1979, Moorhead and Fargo, North Dakota, experienced flooding conditions which should have occurred over a 250 year period of time. It is my belief that the primary reason for this increasing flooding problem is the fact that we have been very efficient in draining the land of the Red River Valley Basin. Ditching practices and wetlands drainage have definitely contributed to our problem.

Therefore, a program like the Small Wetlands Program, is definitely needed to help us be able to avoid further drainage that may exacerbate the problem even more. The state of North Dakota has particularly made good use of the program, and we hope that they will be able to continue doing so.

Thank you for your consideration in this matter.

Sincerely,

Morris L. Lanning
Mayor

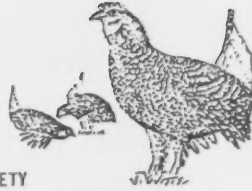
MLL/vm

cc: James Watt, Secretary of Interior
bc: Lloyd Jones, Wetland Management Dist.



North Dakota Chapter

THE WILDLIFE SOCIETY



NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY

RESOLUTION FOR EXTENSION OF THE WETLANDS LOAN ACT AND CONTINUATION OF THE SMALL WETLANDS ACQUISITION PROGRAM

- Whereas, a major responsibility of the Fish and Wildlife Service is to preserve and manage migratory birds and their habitats to provide optimum opportunity for their use and enjoyment by people; and
- Whereas, many of our important waterfowl production and migration habitats continue to be destroyed or degraded at a rapid rate through drainage and intensive agriculture; and
- Whereas, wetlands play an important role in storage of run-off waters, water recharge, pollution control, and wildlife production, thereby providing high natural resource values for all people of the nation; and
- Whereas, the Migratory Bird Hunting Stamp Act passed by Congress in 1934, and amended by Congress in 1958, authorized the purchase of waterfowl production areas and provided the source of funding for such acquisition by requiring waterfowl hunters 16 years of age or older to purchase a hunting stamp; and
- Whereas, the Wetlands Loan Act passed by Congress in 1961 authorized money to purchase small wetland areas, the money to be paid back by future duck stamp sales; and
- Whereas, over two million duck stamps are sold annually in the United States, representing the major source of funding for the small Wetland Acquisition program; and
- Whereas, the 1961 Wetlands Loan Act will expire on September 30, 1983; and
- Whereas, if the Wetlands Loan Act is not extended, the Small Wetlands Acquisition Program will terminate in North Dakota, South Dakota, and other prairie pothole states.
- Now therefore, be it resolved that the North Dakota Chapter of the Wildlife Society at its annual meeting in Bismarck, North Dakota on February 20, 1981 does hereby support the extension of the Wetlands Loan Act, and
- Be it further resolved that the President of the Chapter to set up an ad hoc committee designed for the basic purpose to identify, design, and draft new and innovative methods to achieve wetland preservation in the prairie pothole region, and
- Be it finally resolved that copies of this resolution be sent to all State Chapters of The Wildlife Society, all Regional Chapters, and the Parent Society as well as appropriate individuals, agencies and organizations.

Dedicated to the wise use of all natural resources



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Mr. Homer M. Engelhorn
Manager, Garrison Diversion
Conservancy District
P.O. Box 140
Carrington, North Dakota 58421

Dear Mr. Engelhorn:

Thank you for your letter of April 22, 1983, and the pamphlet, "Reclamation from 1902 . . . Is There Anything Left To Be Done?", prepared by the Garrison Conservancy District.

On page 8 of the pamphlet, it states that "The Federal Fish and Wildlife Service has acquired easements or ownership of 5,272,080 wetlands and associated upland acres in North Dakota . . ." This is in error.

As you should know, the easement agreements were described on legal boundaries for ease of description. However, as you also should know, the easement agreements make clear that the restrictions from draining burning, filling, and leveling apply only to the wetland areas within these boundaries. Although easement agreements include legal descriptions totaling 4,788,300 acres, as of September 30, 1982, the Fish and Wildlife Service (Service) actually controlled only 758,937 wetland acres of that total.

The Service controls 1,257,907 total acres in North Dakota. This includes public domain, transfers from other Federal agencies, gifts, fee title, easements, and secondary jurisdiction (management by agreement) acreage. These waters and lands are administratively managed as National Wildlife Refuges, National Fish Hatcheries, research facilities, and Waterfowl Production Areas.

We would also draw your attention to the recent decision by the U.S. Supreme Court (North Dakota, Appellant v. United States, Appellee, No. 81-773, March 7, 1983) which indicates that, although the total acreage described in the permanent easements is 4,788,300 acres, the easement agreements make clear that ". . . the restrictions apply only to wetland areas (emphasis added) and not to the entire parcels."

The extent of acreage actually controlled by the Service has been explained many times to various agencies and individuals in North Dakota, and it has also been noted by the Supreme Court. I remember well when we first discussed the matter with Al Olson at Camp Grafton in November of 1980, and I think I remember you being there as well.

Under the circumstances it is clear to me that the pamphlet clearly misstates this one crucial fact. I am concerned that after all of this time there appears to be a continuing tendency to misrepresent the nature of FWS control over wetland easements, and especially the actual acreage involved.

We therefore recommend that in subsequent printings of this pamphlet, the acreage controlled by the Service and the map (as appropriate) on page 8 be revised to be consistent with the actual acreage under Service control. We also suggest that an addendum clarifying this error might be included with the distribution of the remaining pamphlets.

Sincerely,

(Sgd) J. Craig Potter

Acting G. Ray Arnett
Assistant Secretary for
Fish and Wildlife and Parks

✓ My name is James Stiegelmeier and I live in Wadsworth County, South Dakota. I farm in partnership with my father and a brother. Our family farm consists of approximately 3300 acres which are scattered throughout the county. Each parcel is different, but all retain one common characteristic. Each parcel of land is poemarked by various sized prairie potholes. We have granted the "No Burn, Drain or Fill" easement on all of these areas. By not draining these wetlands, we have suffered the inconvenience of having to return 10-14 miles to reseed or replant these areas. We have also lost crops to drowning. In our family, we have never felt that drainage of these areas would benefit us more than the original condition.

A number of reasons come to my mind as viable conditions to support this easement program.

First the program is completely optional. Each landowner has the right to allow or not allow the easement.

Persons who acquire land through purchase or inheritance do so not under force.

There is plenty of land available without easement or the purchaser can pay less for the land with the easement. A 20 year easement contract will not be successful because greed will motivate a new owner and wetlands will be lost.

Those who have inherited land with the easement may not have inherited anything if the parent or other relative had not benefited from the financial relationship gained by granting the easement. Maybe the complaining inheritors would rather have nothing. No one has been forced to purchase or inherit land which has an easement.

The program is funded by the sale of Duck Stamps, which are purchased by hunters and conservationists. It is not a direct drain on our federal budget.

The direct physical benefits are erosion and flood control by maintaining the distribution of rainfall and snow-melt across the land. Ground water recharges by way of seepage from these potholes. (In South Dakota, groundwater is an extremely valuable resource.) It provides duck nesting habitats for duck production.

Another reason is that the owner retains control and pays the taxes. The owner can still farm, cut hay, or graze the wetlands as conditions allow. The owner retains the hunting rights.

There is also the financial benefit. The easement payment nearly equals the value of the wetland acres and the yearly interest on that amount can be a fair rental for those wetland acres. The owner still has the option to utilize the land as mentioned above.

What about the future? As a farmer, I am entrusted by God to take care of the land in my possession as well as produce food for the world. I can employ all the recommended ^{soil} conservation practices; plant wildlife habitat areas, plant trees to prevent wind erosion and beautify the countryside, plant grass and grass waterways to prevent water erosion, build terraces and contour strip-crop systems to protect the soil. All these things are only temporary. None are permanent enough as to not be vulnerable to destruction by the next owner or guardian of this land. The "No Burn, Drain or Fill" easement is one permanent way that I can protect the integrity of the land.

I am also a sportsman who loves to hunt & fish. I also love to see the abundant supply of wildlife that our state of South Dakota has been blessed with on a permanent and a migratory basis. I hope to help provide for that abundance of wildlife to still be here for the generations that follow me and my children.

I am also a former Peace Corps Volunteer. My wife and I spent 27 months in the Philippine islands and observed the land use policy of that government as well as the land use system of New Zealand during our return trip.

The Philippines is rapidly destroying its tropical rain forest resource while not enforcing a strong replanting effort. Being the mountainous part of the country, this destruction creates an immense flood and erosion problem when the rains come. New Zealand however, maintains its forests (30-40% of the total land area) in various parks, reserves, and recreation areas. This program, supported by the people, reaps a harvest of national pride as well as resource pride and enjoyment.

I recently heard North Dakota Governor Allen Olson quoted as saying "We need a national farm program that gets the marginal land out of production and into protection." I have stated this as best from memory. There is nothing more marginal than a drained prairie pothole.

The pot hole with its water supply gone, can produce no more than the rest of our semi-arid lands here in the northern great plains. This minor potential production area is insignificant compared to the millions of excellent land already covered by cement and the one to two million acres of prime farm land being covered by cement each year. I agree with Governor Alsen; ^{we should} ~~and~~ take some marginal land out of production and keep the prairie wetlands as they are.

Again, I am a 28 year old farmer, maybe somewhat over idealistic, but I believe in helping preserve our prairie wetlands as part of our national heritage. I absolutely feel that this ^{option} program ^{wetlands loan act.} should continue to be a viable ~~alternative~~ to all interested farmers.

Thank you

James M. Stiegelmeier
JAMES M. STIEGELMEIER
SELBY, South Dakota

^{two}
X SEE $\frac{1}{2}$ page additions

for Senator Aldrich.

MY INTRODUCTION:

I am Clem Wealey Russell, born April 9, 1912, of Deadwood, South Dakota in Scottsbluff County, Nebraska where my grandfathers settled in 1887, And they were among the first irrigators in Nebraska.

My maternal grandfather Thomas Horn Ewing was the first President of the first irrigation canal project built in western Nebraska, the Mitchell Irrigation Canal built on the south side of the North Platte River from the Wyoming border to the Scotts Bluff.

I spent all my formative years on my father's homestead until I was 17 years old in 1929 with water management being our first priority. We were abruptly introduced to wet-lands management in 1923 when almost 80 acres of father's most productive land became inundated from increased irrigation on wider and higher areas that were then being developed and put under irrigation.

From the time of my father's death in 1930 until 1953 I made considerable improvements in the wetlands management on my father's estate, And since 1953 my interests have been in water management in South Dakota and specifically the Angostura Irrigation Project in Fall River, County of South Dakota.

Deadwood, South Dakota 57732
August 6, 1983

Honorable James Abdnor
United States Senate
Washington, D. C. 20510

Dear Jim;

I vehemently oppose allowing any further sales of privately owned lands to the South Dakota Game, Fish And Parks for reasons I shall present to you in words and pictures.

Thirty years ago I purchased the farm across the road from the Land Game, Fish and Parks acquired some 25 years ago, And both properties were in equal states of development, located two miles east of Oral, South Dakota in the Angostura Irrigation Project.

From their first practice of planting and cultivating trees on the land the G, F & P practices were the most incredibly antiirrigation and antiwetlands mentality applied to practices ever contrived.

To add insult to injury for one full mile our farms are just across the road and down slope from the G, F & P property so we get a full charge of their weed seeds and unreasonable and unnecessary uses of poisons applied across the entire bottom of Plumb Creek which is sand and gravel allowing the poisons applied to pollute our well water and the flow of water through our pastures.

My first time to walk across the G, F & P grounds was August 3 and 4, 1983 so as for me to have the pictures for this report to be seen.

G, F & P were in there in the Plumb Creek bottom spraying Canadian Thistles the last week of July 1983 when the seeds were mature and being blown in every direction with every breeze.

Those poisons applied in July do only one thing and that is to pollute the soil and the water below ground in the gravel.

For us to have G, F & P as our up-stream next-door neighbors as "friends" we need no enemies with them applying poisons totally out of season adding more poisons to our domestic water for all animals and humans, And their Canadian Thistle seeds blow across onto our farms every year.

This Page 2 *Page is the Only*
 This copy is for Senator Jim Abdnor;
Page Not in Your

I begin my report with pictures I took August 3 and 4 1983 on the farm 2 miles east of Oral, South Dakota in the Angostura Irrigation Project, managed by the S.D. Game, Fish and Parks. *the next Page is in their hands.*
 To suggest these wetlands are "managed" is to accept brazen imposters as the manager. I found the wetlands of the Plumb Creek bottom to be a jungle of belly high excessively thorny Canadian Thistles where very few hunters would venture to hunt.



The picture to the left is of a cedar tree which has germinated and grown a volunteer. The cedar tree has had absolutely no culturing or care! The box in the bottom is 16 inches high. And in the background is our farmstead and stacks of baled hay. My car is on the road grade across the wetland of Plumb Creek bottom. These pictures were taken August 4, within 200 feet of our farm that is down slope and only across the road.

the Cedar tree!

The picture to the right was also taken August 4, 1983. I had a tape measure visible with 16 inches being the height of the box, and the height of the Canadian Thistles were over three times the 16 inches height of the box. When I was there August 3 and 4 the mature Canadian thistle seeds were drifting hither and yon with every breeze. To have a bench mark for a landmark location I centered on our baled hay stacks in the background.



Page 2

in copy

This copy is for Senator Jim Abdnor;

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To suggest these wetlands are "managed" is to accept brazen impudents as the manager. I found the wetlands of the Plumb Creek bottom to be a jungle of belly high excessively thorny Canadian Thistles where very few hunters would venture to hunt.

This is a copy of Senator Abdnor's;

I did not have
2 Pictures of the
Cedar tree so
this Page (only)
in this report
is different from

The picture to the left is within a rod of the cedar tree shown on Senator Abdnor's page. This picture shows the track of the tractor and sprayer through the Canadian Thistles where the 16 inch high box is located. My car is on the road grade of the almost a quarter of a mile across the Plumb Creek bottom. The wetland here causes the weeds and Canadian Thistles to flourish. Our farmstead and baled hay stacks are in the background.

the copy!

The picture to the right was also taken August 4, 1983.

I had a tape measure visible with 16 inches being the height of the box, and the height of the Canadian Thistles were over three times the 16 inches height of the box.

When I was there August 3 and 4, 1983, the mature Canadian Thistle seeds were drifting hither and yon with every breeze.

To have a bench-mark for a landmark location I centered on our baled hay stacks in the background.

Senator Abdnor;

Page 3

Pictures taken August 3 and 4, 1983 in the Plumb Creek bottom in and about the area of a half mile up stream from our farms.

Picture to the right is where the sprayer and tractor were almost buried in a thick stand of Canadian Thistles after July 20, 1983.



Above, in the area where the machines were stuck in the wetland of the Plumb Creek bottom where only Canadian Thistles flourish.



Canadian Thistles flourishing in the irrigation ditch and in the corn rows where the end of the ditch (above picture) shows our farmstead a quarter of a mile away and the Black Hills in the back ground forming the horizon. The picture on Page 4 was taken about 200 feet from this point across the road and a ditch.

Buffalo Gap * !

Page 4

Copy for Senator Abdnor;

Our corn field in 1980 with clean irrigation ditch and no weeds to be seen in the end of the corn rows. 200 feet from the pictures on page 3.



A view across our farms in 1980 showing only a few annual weeds as sunflowers, kosha, sandburns, and clover with no weeds visible in the corn rows. Buffalo Gap on the right * Black Hills from Angostura to Mt Rushmore can be seen.

Page 5

Copy for Senator Abdnor;

About midway along our farms, August 3, 1983 I drove into the Game, Fish and Parks farm where the sign indicates. The second picture was taken for the page 5 copy just beyond the tree on Senator Abdnor's copy. This shows weeds and only weeds between the tree row and the corn each being 60 foot strips.



Again I took pictures of weeds and only weeds across a 60 foot strip to the strip of corn, with the Black Hills being the horizon.



I walked the length of the outside row of evergreen trees taking pictures at random of the wild oats in mass along side and under the evergreens' branches all ready for only a spark to set the entire row of beautiful evergreen trees going up in flames.

Page 6

Copy for Senator Abdnor;

August 4, 1983 I took pictures of my grandchildren under evergreens I transplanted in 1963 several years after G F, and P trees were planted. These windbrake trees are a quarter of a mile from the Game, Fish and Parks trees where we have pasture grasses growing around and under the trees.



Above, lush growth of evergreens in farmstead windbrake.



Above, evergreens with apple trees the round tops on the right.



I took these pictures along the trail between the tree rows of the Game, Fish and Parks "management" area where wild oats was dry and ready to burn across the areas and under trees to cause an inferno unstoppable.

Page 7

Copy to Senator Abdnor;

Pages 7 and 8 are wetlands I managed and improved the grasses and clovers between 1935 and 1953 on my father's and grandfather's homesteads where the wetland's grasses and alfalfa are being mowed by my nephew Raymond L. Russell now the owner.



Below, is pasture rotation where cattle are moved about every ten days. The cattle had just been moved into the back pasture and the grass and clover in the near pasture is cropped short.



Below is the water running from the Russell farm with the Russell farmstead in the background. Six buildings were demolished in 1948 by a tornado and since then all of a large grove of trees have been removed because most had died.



Page 8

Attached, is 3 pictures of pastures I seeded in 1937, in Scottsbluff County, Nebraska. Part of the reason of these lush pastures is that pasture management rotating in 3 pastures every 10 days allows the lush clovers and high-protein grasses to keep well rooted and established. I have no way of calculating "value Received", But, these pastures take off a lot of fat cattle.



Each of these 3 pictures show "companion" clover and high-protein grass mixes flourishing under managed pasture rotation practices.

Note; the close-up of dense lush clover under Ray's feet.

These saline seep soils grew unpalatable weeds and weed-grasses higher than my head before I seeded these pastures in 1937. And every year before 1937 we burned the pastures to give livestock access to new growth.

The dense clover and high-protein grass mix is cropped to the ground and the cattle had been moved to an adjoining pasture.

Note; the absence of uneaten weeds and weed-grasses as well as no manure visible in piles in each of these three pictures. These pastures have NEVER EVER been sprayed. Grasshoppers eat hair

snake eggs and then die. Aerobic soil and plant life destroy ants here. Fire ants would not exist in these pastures because in the area big red and black ants do thrive in unmanaged pastures.

This my father's estate is owned by my nephew Raymond L. Russell of Mitchell, Nebraska.



I know in a half century these pastures have never been clipped or cut for hay.

The high-protein grass and perennial clovers have supplied soils' nutrients which produce an environment in the soils which is PANACEA.

Note; No anaerobic trees or brush along the stream. The aerobic grass and clover does flourish to the water's edge except where the sough-grass grows in the foreground.



Clem Wesley Russell P.O. Box 366, 74 Van Buren Deadwood, SD 57232

Page 9

Copy to Senator Jim Abdnor;

My conclusions are:

I am told around the Angostura reservoir Canadian Thistles are much worse than the pictures I have been able to show here.

Also, seeds of Canadian Thistles spread from the wetlands of the Angostura reserve "managed" by the South Dakota state Game, Fish and Parks do spread En Masse along all wetlands of the Cheyenne River bottom.

Also, I was told the Morgan farm two miles south of Oral, South Dakota along the bottom wetlands of Spring Creek is a Jungle.

The pictures I have included do show that we of the Russell family do have management practices which improve windbrakes and wetlands.

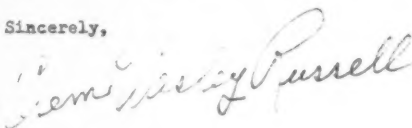
Game, Fish and Parks has in 1983 in July added more poison to our already poisoned domestic water supplies, And in no way has the poisons applied in July 1983 did one tinkers dam of good in retarding the spread of Canadian Thistles.

I find South Dakota state Game, Fish and Parks "management" of wetlands to be the most incredibly absurd impudent antiirrigation and antiwetlands management practices ever contrived.

My successes managing wetlands prove there are better ways!!!!

Sincerely,

Clem Wesley Russell
P.O. Box 366
Deadwood, South Dakota 57732
Phone # 605 578 3723



Mr. Erwin Twinnerheim
Webster, S. D.

I am opposed to any further funding of the Wetland Easement Buying Program. Due to the fact we already have more Easements in effect than we should have.

A lot of these Easements were obtained through fraudulent means. For example older people were approached, who did not understand the contract they were getting into. Many thinking they were getting a payment every year. These Federal Agents would approach these unsuspecting people, who trusted them, to sign these Easements and invariably it would be to their detriment. Also my neighbor was coned into an Easement, They showed him a Contract that I had successfully signed.

which was fake. So in this manner they got him to sign a perpetual Easement, and he has regretted it ever since. He has approximately a 100 acre slough, which he has had a crop in for several years including this year and if it wasn't for this Easement he could develop this slough and have a perpetual crop instead of a perpetual Easement.

This is what I mean by developing. I have a picture No. 1 of a development showing how the water has been dammed up. This has been done with private money by three landowners. A project like this is difficult enough when three landowners are involved, but when the Federal Wildlife is involved it gets to be impossible.

They have been known to stop ~~any~~ developments like this. This concentrated body of water also has fish in it and is a haven for ducks and geese. Before this was developed it was a swampy area in the spring and by fall it would be weeds and dried out being no good for any kind of production. Now it produces beautiful crops, wildlife and even fish.

These Federal wildlife agents also have a habit of intimidating people. I received a telephone call from the Army Corp Engineers about a dyke that has been in place for 50 years. I have a picture No. 2 that shows this dyke backing up water. In my opinion they have singled me out because

of my out spoken opposition to their Easement program. This may sound like sour grapes but I know of numerous other structures that have been built more recently and have no permit but they have chosen not to bother them. Needless to say my answer to their harassment was "I don't need your permit."

These are just a few of the problems people encounter because of these Easements.

Several people have told me they fear to speak out against the system because of the fear of retaliation.

I say Amen to what President Reagan said about the environmentalists, that they will not be satisfied until the White House looks like a bird-house.

I have often wondered if they
have thought about how slippery
it would get in New York or
even Aberdeen if we all rode
either a horse or camel.

Leaving you with these
thoughts I hope that you
will do everything in your
power to stop the funding
for the Easement Buying Program.

Ewin Twinnier
webster S. D.



STATEMENT OF ROBERT
PERRY

CASPER E. YOST CHAPTER
100 SO. 19TH ST., OMAHA, NEBRASKA 68102

J. L. W. ZETLOW COUNCIL
15 - 4th Ave., S. W., Aberdeen, S. D. 57401

YOU MUST WORK VERY HARD FOR A FEN FISH NOW.

IN THE 1980'S THE RAILROAD DRILLED AN ARTESIAN WELL IN ABERDEEN, IT WENT WILD AND FLOODED THE TOWN, WHEN IT WAS FINALLY BROUGHT UNDER CONTROL, TWO WATER WHEELS WERE ATTACHED TO THE WELL TO PRODUCE ELECTRICITY. IN THE 1930'S THE WELLS WOULD NOT FLOW ANY MORE AND WERE PLUGGED. MOST WELLS IN THIS AREA HAVE BEEN REDRILLED SEVERAL TIMES, HOW LONG CAN THIS GO ON?

WE MUST DO SOMETHING TO PRESERVE THE WETLANDS AND TO SECURE MORE LAND SO THAT IT CAN NOT BE DRAINED. I BELIEVE THAT WE HAVE LAND IN THE AREA THAT COULD BE PURCHASED OR LEASED WITH OUT ANY LEGAL ACTION.

GOVERNOR JANKLOW HAS PROPOSED SEVERAL WATER PROJECTS IN THIS AREA. ONE THAT THE WILLOW CREEK DAM BE RAISED, THIS WOULD CHANGE THE ACRE FEET OF WATER FROM 4,029 TO 13,914, THE CITY OF ABERDEEN HAS ALREADY AGREED TO MAKE THE ENTIRE 1520 ACRES INTO A WILDERNESS PARK.

GOVERNOR JANKLOW HAS ALSO PROPOSED A DIVERSION OF THE JAMES RIVER TO THE MAPLE CREEK IN THE AREA NORTH AND EAST OF ELLENDALE NORTH DAKOTA, THIS 7½ MILE PIPE LINE WOULD BRING FLOOD WATERS FROM THE JAMES INTO THE MAPLE, ELM AND WILLOW CREEK AREA'S BEFORE IT RETURNED TO THE JAMES. THIS WOULD HOLD BACK FLOOD WATERS, SINCE THEIR ARE MANY DAMS ON THESE RIVERS, IT WOULD ALSO PRESERVE WATER FOR FISH AND WILDLIFE.

IF WE ARE GOING TO HAVE FISH AND WILDLIFE FOR THE GENERATIONS THAT ARE TO FOLLOW US, AND IF WE ARE GOING TO HAVE WATER IN OUR

Telephone

Pioneers
of America

CASPER E. YOST CHAPTER
 100 SO. 19TH ST., OMAHA, NEBRASKA 68102

J. L. W. ZIETLOW COUNCIL
 15 - 4th Ave., S. W., Aberdeen, S. D. 57401

AQUIFER'S, WE MUST SECURE AND PROTECT WETLANDS AS SOON AS POSSIBLE.
 IF EVERYONE WOULD STOP AND THINK JUST WHAT WE HAVE DONE TO THIS
 EARTH IN ONE HUNDRED YEARS, MOST AQUIFER'S IN THE LAND HAVE HAD A
 VERY DECIDED DROP IN WATER LEVEL, MOST WET LANDS ARE DRY UNLESS
 PROTECTED. WE HAVE IN A VERY SHORT PERIOD OF TIME UNDONE WHAT IT
 TOOK THE GLACIERS 10,000 YEARS TO STORE UP FOR US.

I THANK THE COMMITTEE FOR THE TIME HERE TODAY AND FOR
 BEING WILLING TO COME TO ABERDEEN TO SEE AND HEAR OF OUR PROBLEMS.

THANK YOU,

R. J. PERRY
 401 SO. WEBER
 ABERDEEN, S. DAK. 57401

Telephone of America Pioneers

CASPER E. YOST CHAPTER
100 SO. 19TH ST., OMAHA, NEBRASKA 68102

J. L. W. ZIETLOW COUNCIL
15 - 4th Ave., S. W., Aberdeen, S. D. 57401

A TALK, PREPARED AND GIVEN, BY R. J. PERRY ON AUGUST 10, 1983

SENATOR ABDNOR
SENATOR CHAFFE

I THANK YOU FOR THE INVITATION TO COME BEFORE THE
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION.

I AM A RETIRED TELEPHONE SUPERVISOR, I HAVE AWARDS
FROM SEVERAL COLLEGES AND HISTORICAL SOCIETIES.

TODAY I WOULD LIKE TO GO BACK INTO HISTORY. IN 1864
THE ARMY DECIDED TO BUILD FORT WADSWORTH, NOW FORT SISSETON, IT
WAS NOT TO BE CONSTRUCTED EAST OF THE JAMES RIVER, HOWEVER, THEY
COULD NOT FIND MATERIAL TO CONSTRUCT A FORT AT THIS LOCATION. ON
ADVICE OF HIS SCOUTS AND LOCAL INDIANS, LT. COL. JORN CLOWNEY
FOUND A LOCATION (about 75 miles north east of Aberdeen) IN
HIS REPORT TO HEADQUARTERS HE TOLD OF THE CHANGE IN LOCATION, IN
THE NEW AREA WERE MANY GLACIER LAKES TEEMING WITH FISH AND WILDFOWL
AND THERE WAS A GREAT DEAL OF WILD GAME THAT COULD BE USED TO
FEED THE TROOPS, THE SPOT THAT HE TOOK FOR THE LOCATION OF THE FORT
WAS A LARGE AREA WITH WATER ALMOST ALL THE WAY AROUND THE LOCATION,
WHICH WOULD AFFORD PROTECTION FOR THE TROOPS. TODAY THERE IS SOME
WATER IN THE DEEP HOLES, ALMOST ALL THE AREA IS DRY. ROY LAKE,
SIX MILES FROM THE FORT, IS ONE OF THE LARGEST LAKES IN THE STATE,
IT HAS TWO STATE PARKS, I WOULD GUESS THAT ROY LAKE'S WATER LEVEL
IS DOWN AT LEAST SEVEN FEET. ALL OF THE LAKES IN THE AREA ARE DOWN,
WHY? FARMING AND THE DRAINAGE OF WET LANDS. THE LAKES THAT WERE
TEEMING WITH FISH OF ALL KINDS IN THE 1860'S ARE NOT TODAY,

Testimony on Federal Wetlands Protection

Aberdeen, SD - August 10, 1983

Fergus Falls Fish & Game Club, Fergus Falls, MN

by David Whipple, Pres.

Senator Chaffe & Senator Abdnor:

It is a pleasure for me to represent the Fergus Falls Fish and Game Club here today on the topic of future wetland preservation, particularly as this proposed legislation will affect wetland and wildlife resources in our area of West-Central Minnesota.

The Fergus Falls Fish & Game Club is made up of members with a wide interest in conservation and part of our early founding was based in an organization called the "Save the Wetlands, Inc.," an organization which began in the mid-1950's and carried through to this day to work with the state of Minnesota and with the U.S. Fish & Wildlife Service for the purpose of preserving wetlands. We have had a very close association with our public agencies in this effort and are very proud of the accomplishments those agencies and our organization have made in the effort of conservation of wetlands in our area and throughout the prairie region of North America.

We hope you will take strong measures to pass legislation which will extend the Wetlands Loan Act to continue this important work of wetland preservation. By acquisition by the Fish and Wildlife Service, we have seen permanent wetland protection in the form of outright land purchases and in the purchase of wetland easements from cooperating farmers. We think this

effort should continue into the future and we support your efforts to bring this legislation to fruition.

We know that wetlands preservation work costs money. To that end, we support your efforts to increase the cost of the duck stamp from \$7.50 to \$15. As sportsmen, we will gladly pay our share of the costs of preserving this habitat which is so vital to us. We are also pleased to shoulder our share of the burden for the other values of wetlands such as flood protection, ground water recharge and the beautification of our landscape to make our environment a more pleasant place in which to live.

We like best Senator Chaffe's proposal to bring this cost from \$7.50 to \$15 on a gradual basis between now and 1988. While we recognize a need for more money now, we ~~do not believe we~~ would more likely accept a gradual increase than the lump sum increase all in one year. This has been proposed by others. You can count on us sportsmen to pay our fair share of all habitat programs, wetlands included.

On the issue of fees for entrance to National Wildlife Refuge lands, this is not a big issue in our area since most of the lands in the National Wildlife Refuge System are Waterfowl Production Areas and would not lend themselves well to a fee collection schedule for activities other than hunting. However, on the major refuges where there is enough non-hunting traffic to make the economics of collecting the fees feasible, we think

its a good idea and we support your efforts to establish some kind of fee for the use of these refuges by non-hunters. We look at it like this: we pay for these lands with our duck stamps, we are very willing to share them with others but when the crunch comes for more and more money, we would welcome the participation by the non-hunter who also uses these lands.

Likewise, on the matter of putting Land and Water Conservation Fund dollars into the business of preserving wetlands, we think that's an excellent idea. The method of making grants to the states and also keeping some of the money in the Fish and Wildlife Service for acquisition, in our opinion is a good idea. It would encourage state participation and will get many states active in wetland conservation who are not now active. It also provides for a broad base in wetland preservation without adding additional tax burdens on the people and we think the Land and Water Conservation Funds would be a good place to secure monies for wetland preservation.

Thank you for this opportunity to comment on your legislation and we commend you for coming here from so far away to listen to the people of this part of the country who are very much concerned with the preservation of wetlands and the conflicts associated with all conservation issues. Be assured that the Minnesota sportsmen is well organized and will support you strongly in all your conservation efforts, particularly in your wetland acquisition efforts. Thank you very much.

Position Paper on Wetlands Protection by the Grant County Sportsmen Assn.
Presented at Wetland Hearings, Aberdeen, South Dakota, August 10, 1983

Senator Chafee, Senator Abdnor:

My name is Gary Peterson; I'm President of the Grant County Sportsmen's Association and reside in Hoffman, Minnesota. Grant County Minnesota is located in the West-central part of the State.

Senator Chafee, I'd like to get right to the point by saying that we like wetlands and we strongly endorse your proposal to extend the Wetlands Loan Act to continue the important work of wetland preservation.

We also know that duck stamps alone don't bring in enough money to buy the wetlands that are for sale. We're glad to see that you've included a provision for taking Land and Water Conservation Fund money and using that source of funds for wetland preservation. We also like your idea of making direct grants to the states from the Land and Water Conservation Fund for wetland acquisition, and also keeping some of the money in the Fish and Wildlife Service. These, we feel, are two excellent ideas.

There's a lot of disagreement over whether or not the price of a duck stamp should be raised and, if so, how much should be charged. Overall, we support the proposal to involve the non-hunting public in the purchase of duck stamps to support the Migratory Bird Conservation fund. Sales of duck stamps at refuges as entrance permits is an excellent idea. A \$15 duck stamp may seem high to some people, but when you figure that a box of steel shot doesn't cost much less, the duck stamp price doesn't seem out of line. Whatever

you decide on the price of a duck stamp, you can count on us sportsmen to pay our share of the cost for wetlands protection.

I understand that you had a recent eye injury and I know that you may be under some discomfort being here so far from home, but believe me, we appreciate your presence here in Aberdeen and I, for one, am very glad to have had the opportunity to talk to you directly about an issue that I consider to be very important. Thank you for the opportunity to be here.

Testimony on Federal Wetlands Protection

Aberdeen, SD - August 10, 1983

Ashby Fish & Game Club, Ashby, MN

Senator Chaffe & Senator Abdnor:

I am pleased to represent the Ashby Area Sportsmens Club, on the topic of future wetland preservation especially as this proposed legeslation will greatly offect wetland and wildlife resources in our area of West - Central Minnesota.

The Ashby Area Sportsmens Club is a fairly young club, but most of its members have been intereseted in conservation for many years, and we have seen first hand wetlands that have been saved by the Fish and Wildlife Service and other conservation organizations. If not for these efforts these valuable resources would be lcast forever. For this reason we hope you will take strong measures to pass legislation which will extend the Wetlands Loan Act to continue this important work of wetland preservation. By acquisition by the Fish and Wildlife Service, we have seen premenant wetland protection in the form of outright land purchases and in the purchases of wet-land easements from cooperating farmers. We think this effort should continue into the future and we support your efforts to bring this legislation to fruition.

We know that wetlands preservation work costs money. To that end, we support your efforts to increase the cost of the duck stamp from \$7.50 to \$15. As sportsmen, we will gladly pay our share of the costs of preserving this habitat which is so vital to us. We are also

pleased to shoulder our share of the burden for the other values of wetlands such as flood protections, ground water recharge and the beautification of our landscape to make our environment a more pleasant place in which to live.

We like best Senator Chaffe's proposal to bring this cost from \$7.50 to \$15 on a gradual basis between now and 1988. While we recognize a need for more money now, we think the general public would more likely accept a gradual increase than the lump sum increase all in one year. This has been proposed by others. You can count on us sportsmen to pay our fair share of all habitat programs, wetlands included.

On the issue of fees for entrance to National Wildlife Refuge lands, this is not a big issue in our area since most of the lands in the National Wildlife Refuge System are Waterfowl Production Areas and would not lend themselves well to a fee collection schedule for activities other than hunting. However, on the major refuges where there is enough non-hunting traffic to make the economics of collecting the fees feasible, we think its a good idea and we support your efforts to establish some kind of fee for the use of these refuges by non-hunters. We look at it like this: we pay for these lands with our duck stamps, we are very willing to share them with others but when the crunch comes for more and more money, we would welcome the participation by the non-hunter who also uses these lands.

Likewise, on the matter of putting Land and Water Conservation Fund dollars into the business of preserving wetlands, we think that's an

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excellent idea. The method of making grants to the states and also keeping some of the money in the Fish and Wildlife Service for acquisition, in our opinion is a good idea. It would encourage state participation and will get many states active in wetland conservation who are not now active. It also provides for a broad base in wetland preservation without adding additional tax burdens on the people and we think the Land and Water Conservation Funds would be a good place to secure monies for wetland preservation.

Thank you for this opportunity to comment on your legislation and we commend you for coming out here from so far away to listen to the people of this part of the country who are very much concerned with the preservation of wetlands and the conflicts associated with all conservation issues. Be assured that the Minnesota sportsmen are well organized and will support you stongly in all your conservation efforts, particularly in your wetland acquisition efforts. Thank you very much.

Statement by Galen Buterbaugh, Regional Director, U.S. Fish & Wildlife Service, Denver, Colorado, at Wetland Hearings, Aberdeen, South Dakota, August 10, 1983.

Mr. Chairman, I am Galen Buterbaugh, Regional Director of the U.S. Fish and Wildlife Service, Region 6, which includes Rocky Mountain and Great Plains States. The Region is headquartered in Denver, Colorado. The opportunity to provide a brief statement concerning wetlands and our program to help insure the conservation of the resources they support is appreciated.

The States of North Dakota, South Dakota, Montana, and Nebraska are among the eight that comprise Region 6. Those four states, and Minnesota, represent the heart of the Prairie Pothole Country of the United States and within them is found much of this Nation's most important and productive migratory water-bird breeding habitat.

The conservation of waterfowl and other migratory birds and the habitats upon which they depend is one of the primary missions of the Fish and Wildlife Service. We are fully aware the Service alone would be unable to carry out that mission and we work as closely and cooperatively as possible with other Federal agencies, the States and their various agencies, and private land-owners.

Recognition of the need for wetland conservation did not arise spontaneously, but rather grew out of international concern for migratory birds that depend upon prairie wetlands for survival. As far back as 1916, the United States and Great Britain (acting for Canada) negotiated the "Convention for the Protection of Migratory Birds." This was the first of five treaties that established an international, cooperative effort to conserve migratory birds and their habitats. These treaties, negotiated by diplomats, approved by the Congress, and signed by Presidents, provide the foundation for National laws that grant the Federal Government the authority and responsibility to manage migratory birds and their habitats. Just this year, the U.S. Supreme Court confirmed that, "The protection of migratory birds has long been recognized as a national interest of very nearly the first magnitude"

To better meet treaty obligations the Migratory Bird Conservation Act passed in 1929, provided authority for the acquisition of migratory bird habitat. Specific wetland conservation efforts in the Prairie Pothole States were authorized by Congress in 1958 with establishment of the Waterfowl Production Area Program to protect waterfowl breeding habitat. Funding comes from the Migratory Bird Conservation Account which contains monies generated from the sale of "Duck Stamps" and certain surplus Federal property. Areas acquired are termed "Waterfowl Production Areas" (WPAs) and are incorporated into the National Wildlife Refuge System. In 1961, the Wetlands Loan Act was enacted to provide an additional funding source with which to combat the increasing rate at which wetlands were being lost. That Act authorized the

appropriation of up to \$105 million over a 7-year period (FY-1962-68) as an advance loan to the Migratory Bird Conservation Fund. This loan was to be repaid with 75 percent of the annual "Duck Stamp" receipts after that 7-year period. In recognition of the need to continue the conservation of wetlands, Congress twice has extended the Wetlands Loan Act; once in 1967 and again in 1976. The 1976 extension increased the term of the loan through September 30, 1983, and increased the amount of the loan from \$105 million to \$200 million. The Administration has recommended that this authorization be extended for 10 years and that the loan be forgiven.

The original objectives of the program were the conservation of 1,750,000 acres, primarily in North Dakota, South Dakota, and Minnesota. Of this, 600,000 acres of wetlands and upland nesting habitat were to be purchased in fee title. The remaining 1,150,000 wetland acres are to consist of easements purchased from landowners that convey to the Government the perpetual rights to drain, burn, fill, or level. In 1976, these goals were increased to 900,000 acres of fee lands and 1,600,000 wetland acres under easement.

It is estimated 7,000,000 ducks, a myriad of geese, and vast numbers of other water-oriented, migratory birds are dependent upon the wetlands in the Prairie Pothole Area of the United States for essential breeding habitat.

Those objectives set in 1976 reflect the need to preserve, by all means, at least 75 percent of the wetlands that existed in the United States' portion of the Prairie Pothole Region in 1962 and were set under the assumption that the loss of waterfowl production caused by the destruction of 25 percent of those wetlands could be offset through intensive management of the lands acquired in fee title.

These agreed upon goals have not yet been attained.

During the 21 years of the accelerated wetlands acquisition program (1962-83), the Service has acquired about 496,000 acres of fee lands and easements on approximately 1.2 million acres of wetlands. Of the objectives, there remains to be acquired about 404,000 (45%) of fee land and 400,000 wetland acres (25%) of easements.

The approximately 1.2 million wetland acres upon which we currently have conservation easements involve nearly 19,000 separate contracts. I think it is safe to assume that any program involving that many individuals and that many legal documents will, from time to time, result in some misunderstandings between the interested parties. However, we are pleased at the amount of cooperation we receive from most of those landowners who are participating in this program. For example, over the past 5 fiscal years we have averaged only about 95 violations of the terms of the easements per year. Of these, the vast majority (about 72%) have been voluntarily corrected by the landowner when they were brought to his attention. Many of the remainder were corrected after additional reminders. About 16 percent required

eventual court action. The Government prevailed in virtually all of these instances with court-ordered compliance being the resolution in most. However, some serious violations have resulted in fines and, in a few cases, jail sentences for the violator.

We recognize that some apparent violations may result from honest mistakes on the part of the person managing the land. In some cases, the land has changed hands since the easement was taken, and in others a third party may be managing the land and not be aware of the existence of the easement. To try and minimize such situations, we now attempt to notify new owners, and my staff and I are working closely with our counterparts in the State of North Dakota to develop a procedure whereby we can work cooperatively with any landowner from whom we have purchased the rights to drain, burn, fill, or level wetlands on his property to make sure all parties are fully aware of the scope of the easement documents and the past estimates of wetland locations on a covered piece of property. I expect this procedure to be operational in the State of North Dakota soon.

In this context, I'd like to take this opportunity to correct an erroneous figure that has been reported repeatedly by the news media of North Dakota. The Service does not "control" 4.6 million acres in North Dakota. If we include all Service-owned lands in that State--Research Centers, Fish Hatcheries, and administrative sites, in addition to the National Wildlife Refuges, the Service owns some 432,000 acres. In addition, we have purchased, from willing sellers, I repeat, willing sellers, their rights to drain, burn, fill, or level approximately 758,000 acres of wetlands on their land; the landowner retains title to the land, and may use the surrounding uplands in any way he chooses, and continue to farm, hay, or carry out other compatible activities in the basin of the wetland itself during periods it is naturally dry. Therefore, it can be said correctly that the Service exercises varying degrees of control over approximately 1.2 million acres in the State of North Dakota.

The need for this program continues. For example, current data indicate that 2.7 million of an estimated original 5.0 million acres of wetlands in North Dakota alone already have been drained and that an additional 20,000 acres annually are being drained.

Although Fish and Wildlife Service concern for wetland conservation stems primarily from migratory bird conservation-related responsibilities, wetlands cannot be studied without soon becoming very aware of other, perhaps equally important, benefits they provide, resident game species depend on wetland acres. It is the water that percolates into the soil from wetlands that replenishes the aquifers that supply the wells that make pivot irrigation systems, and the crops they produce, possible in some areas; water from heavy rains or snowmelt is trapped and held temporarily in wetland basins, thus providing additional agricultural water in the north, while simultaneously reducing the frequency and severity of floods suffered by towns and agricultural lands downstream; by reducing and slowing the rate of

runoff, wetlands also reduce the rate at which topsoil is lost through erosion and the sediment and pollutants that settle in these basins reduce the amount that reaches the rivers, streams, and water supplies of downstream residents. Ducks and other birds are not the only losers when wetlands are drained unwisely, nor should wetland conservation be perceived as the concern solely of the birdwatcher or the duck hunter.

The prairie pothole wetlands, and the life they support, are Nationally and internationally recognized natural resources, fully comparable in significance to California's redwoods, Yellowstone's thermal areas, or the Grand Canyon. The economic, and other, benefits they collectively provide can barely be touched upon in a brief statement. But we recognize those values, we recognize Service responsibilities, and we intend to do our best to meet them.

Mr. Chairman, I assure you and those here in attendance that whatever wetland conservation program the Service undertakes will be carried out in full cooperation with affected State and Federal Agencies and the private landowner.

Watertown, S.D.

July 29-1983

Senator James Abouf
 543 30th West Senate Office Bldg.
 Washington D.C. 20510

Dear Senator Abouf: I have your letter regarding the
 Aberdeen meeting to discuss extension of the Watertown
 Loan Act. I will be unable to go to Aberdeen
 but I strongly urge the extension of the the Act.

Sincerely -

Mrs. Beryl B. Blake
 403 S. Broadway
 Watertown, S.D.

57201

Mrs. Beryl B. Blake
 Watertown, S.D. 57201

Aug. 9, 1983

To: Sen. Jim Abdnor
 Sen. Chaffee

First a little background on myself, I own and operate a diversified crop and livestock farm in miner county South Dak. About half the land I own is under a wetland easement sold by a former owner in 1968.

As a second generation easement holder I would like to express some of my feelings on the wetland easement program and Senate Bill 1329.

I feel as though congress has turned a totally uncontrolled monster loose on the general public; given it a name of Federal fish and wildlife service and then closed its eyes. I feel the need to save wetlands as much as anyone; but let's put some common sense into it.

Before any more funds are appropriated let's correct some of the past 20 yrs. of mistakes such as defining the wetland on part easements which now are defined only by the whole land tract's legal descriptions.

compensation for succeeding generations of easement owners for maintenance of wetlands; It is costing me double expense to operate easement ground versus now easement ground. Which by the way does not have any wetland on the tillable ground if the definition in senate bill 1329 on wetland is correct.

On senate bill 1329; If I understand the wording on page 6; lines 1 thru 3 correctly the federal fish and wildlife service would not have to pay back previously borrowed money. I oppose this block grant attitude. This borrowed money should be payed back; the rest of us have to so can they.

Part of this bill appears to have the horse before the cart. While providing fifty million dollars to the state; starting in Oct 1983, the wetland inventory and trend analysis is not yet known? nor required before Sept 1986 + 1988.

It would be better judgement in my mind to know what's out there to be saved before spending more money.

After 20+ yrs in operation the federal fish and wildlife should know.

The bill does not allow any credit for man made stock dams or ponds. In our part of the country they are used by wildlife more than any wetland. Now does the bill require the control of noxious weeds on land purchased for wetlands. The only control used at present in our area is mowing after they have gone to seed, and then they are not totally mowed.

I think it would be wise to require a local board be established to approve any easement or purchase of wetlands. The board could be

comprised of a county commissioner; (purchased land reduces the amount of tax collected; $\frac{1}{3}$ the amount collected from private property) a person from the soil & natural resource service; and a farm operator. This would help keep the purchase of wetlands on top of the table, not under the table where it is now.

The wetland program would be made much easier to accept without a perpetual easement. A renewable easement seems more fitting to our nation's changing economic and social personality. My
Oldest son while attending college (3)

last yr. gave a talk in his speech class on perpetual easements; at the end of his speech he asked if anyone knew the meaning of the word "perpetual" no one did. If the general public does not understand it how are we to keep fraud out of a wetland easement?

The perpetual easement in the wetland program has set up the seller and the federal fish and wild life services as a god that took away my freedom of choice. The gun that congress has allowed to be placed to the heads of the following generations of perpetual easement land owners, while the seller runs off with the compensation, is one step away from slavery.

Please remove it. At least with a renewable easement the federal fish and wildlife service would be forced to act like a service and not like a dictatorship as they are now.

Thank you for your time

Richard Burghardt
Tellico S.D.

Rt. H Box 12

57337

WRITTEN TESTIMONY

Submitted to
Congressional Hearing on
Senate Bill # 1329
Senators Abdnor & Chaffee

at

Aberdeen, S.D.

August 10, 1983

Submitted by

Arlen Foster
Secretary
of

Citizens Against Perpetual Easements

Dear Sirs:

As secretary of a landowners organization, I welcome this opportunity to have input into a federal program with far reaching effects in this area. We were unable to have any input into the old program, and landowners being the ones most affected by it, there have been many problems. Therefore, we are asking that before any new program or extension of the old program is approved, these problems be corrected.

Some of these problems are fraud, misrepresentation, and lies on the part of USF&WS officials to obtain perpetual easements. USF&WS officials have even admitted to unethical practices but deny responsibility for them. (see U.S. vs State of N.D.) Some examples of these practices are verbal assurances that the easement would have very little effect on the land. "Just sign this paper and we'll give you some free money."

The actual result of these actions is that the USF&WS has bought the water rights on vast acreages in South Dakota, North Dakota, and Minnesota. In many cases in the early part of the program these rights were gotten for \$1-\$2 per acre. This is hardly just compensation when one considers that land ownership is basically comprised of surface access or use rights, water rights, and mineral rights.

Other fraudulent practices include: assuring the landowner that the easement would in no way affect the ^{market} resale value of the land when in fact, in some cases, it is discounted by

as much as 25%. Some buyers will not even consider buying land which is under a perpetual easement.

Some landowners signed the contract with the understanding that the easement covered only a portion of their land, when in fact the papers came back covering the entire tract.

Other owners were pressured into signing the contract "...because their neighbors already had..." when in fact the neighbors had not.

Some other practices which we question include taking of easements where there are no wetlands, strategically placed easements to control a watershed, and control of adjoining land through the wording in the contract of "appurtenant drainage."

Finally there is a question as to the legality of the perpetual clause. The program started with 20 year easements but through departmental policy and not Congressional mandate switched to perpetual. In the Congressional hearings at the beginning of the old program, Mr. Dingell stated that there was some question as to the legality of the perpetual clause. (see brief for State of N.D. vs U.S.) The American Jurisprudence lawbook #61 and the Tennessee State Constitution, Article I, Section 22, both contain the same wording: "That perpetuities and monopolies are contrary to the genius of a free society and shall not be allowed." Those people planning their estates are not allowed to control their estates for longer than 19 years and leases have been limited to 10 -20 years.

In closing, I would like to emphasize that Citizens Against Perpetual Easements (CAPE) is not anti-wildlife.

3.

anti-wetlands, or even anti-easements. But we are against the perpetual aspect and would like to see a 20 year easement, or an easement for the duration of the ownership of the original signer. We have made proposals to the USF&WS to have the true wetlands defined and then we would manage those wetlands specifically for maximum production of wildlife, but our proposals have fallen on deaf ears. It would appear that the philosophy of the USF&WS is to take advantage of the landowner as much as possible by whatever means possible for their own purposes of land and water control, rather than wildlife production.

We would like to build a mutually beneficial relationship between the USF&WS and the landowners based on respect, fair play, and just compensation. Again we stress that any new program must be preceded by renegotiation of all past fraudulent perpetual easements, and rectification of all fraudulent practices, as case law points out that fraud invalidates a contract.

Thank you for letting me express myself in this forum.

Arlen Foster
Secretary
Citizens Against Perpetual
Easements
RR 1 Box 29
Fulton, S.D. 57340

WRITTEN TESTIMONY

Submitted to
Congressional Hearing on
Senate Bill #1329
Senators Abdnor & Chaffee
at
Aberdeen, SD
August 10, 1983

Submitted by
Bernard Muller
Chairman
of
Citizens Against Perpetual Easements

Dear Sirs:

As chairman of Citizens Against Perpetual Easements, a landowners organization, I welcome this opportunity to address the committee as to some of the problems we see in the small wetlands program and offer suggestions for a new and better program.

First of all, CAPE (Citizens Against Perpetual Easements) does not oppose saving wetlands because we realize the value of them in helping to stabilize our ground water supply and also for livestock watering and for use of wildlife. Rainfall is more easily attracted to areas where there are small bodies of water standing.

But we do oppose the manner in which the FWS (Fish Wildlife Service) has gone about in preserving the wetlands. First of all, we think the perpetual term of the easement is positively unfair to the landowner. We would favor a change in the easement from perpetual to twenty or twenty five years, thus leaving some flexibility for each generation to receive some compensation and put forth his own efforts in preserving wetlands.

Nature does have a way of altering and diversing wetlands, streams and potholes through a period of a long range of years. For the purpose of good farm and ranch management the farmers and ranchers are going to need some flexibility in managing these as methods of farming and ranching change. And a perpetual contract does not allow for any flexibility.

CAPE also would like to propose that the payments on these easements be made on a one to five year basis with maybe some sort of bonus given to landowners for additional management to benefit all wildlife.

We also would like to see the program administered more at a local level so that each individual wetland owner may obtain technical assistance in managing the wetland for the best multi-purpose of agriculture, livestock grazing, waterfowl production and all other upland game to the best use possible. The most efficient and probably most effective way of administering the program in this manner would be to attach the program to the soil and water conservation districts for local administration. And by this manner all local organizations would have an opportunity to have input in the program.

CAPE believes the present program has not been explained fully to landowners and in many cases landowners have sold easements of perpetual duration and are now wishing that they wouldn't have sold them. To the best of our knowledge FWS never held any public hearings or meetings, nor did they do an environmental impact statement, nor an economic impact statement on small wetlands program before it was implemented. In most cases landowners had heard nothing of the program until a purchasing agent employed by the FWS approached them and offered them a token payment on a perpetual easement. They would make such statements such as the perpetual easement wouldn't affect the selling of their property at all, and the landowner was left with the impression that all he had to do was not drain the wetland. Also, it was never explained to him that through the appurtenant drainage clause in the contract he could do nothing to prevent any water from entering his wetland without it being a violation; also in many cases this prohibits a neighbor from freedom to use water or drain or irrigate, etc. on his land where he has never sold an easement. Perpetual easement have been purchased on many wetlands which are large enough to consist of two or more owners. After they have purchased an easement from one owner, the adjacent landowner may soon find out that they can't drain their portion of the wetland. A great percent of the near seven thousand easements in South Dakota fit this description.

Our state water laws uphold appertinent drainage laws but on these affected areas where two or more landowners would want to negotiate between themselves on an irrigation or drainage problem or any problem of good soil and water management they can get proper permission from the state water board. When one landowner has sold a perpetual easement it positively eliminates any negotiations and also any hopes forever that the area could be improved for agricultural or irrigation purposes or any other type of farm or ranch management program. A twenty year easement program would allow these situations to be reviewed and renegotiated each twenty years to come up with a more equitable and fair solution for wetland preservation tied to good farm and ranch management.

Overlapping easement of the nature mentioned above have pitted farmer against farmer, brother against brother, and father against son. CAPE has met with U.S. FWS on numerous occasions to discuss some of these problems and find they are unwilling to admit any discrepancies of the program.

Many older landowners now wishing to retire and who have sold a perpetual easement in years past now find it almost impossible to find a buyer to purchase their land at market value and quite often have to take a sizeable discount to sell their land. And this course will continue on these tracts of land forever.

CAPE believes the funding for a new program should come from increasing the sale of duck stamps and also all special interest groups who have requested the program in the past be allowed to make contributions to support the program in as sizeable an amount as they see fit and we also believe the two hundred million dollars owed to the federal government for the present program should be paid back in full through the sale of duck stamps. We believe no money should come from the Federal treasury to support this program.

We also believe payment in lieu of taxes on fee land should be guaranteed to local governments annually based on same rate as taxation on adjacent land.

Just a reminder in closing, CAPE favors a new program administered more fairly and justly to the landowners of the upper midwest with some of our comments afore - mentioned be used as guidelines.

Bernard Muller
Chairman
Citizens Against Perpetual Easements
R.R. A Box 34
Fedora, SD 57337

STATEMENT OF
THOMAS KLINKEL, PRESIDENT OF
THE COMMITTEE TO PROTECT HUNTING, INC.
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION
OF THE
SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
ON
WETLANDS CONSERVATION MEASURES
S. 1329 and S. 978

Aberdeen, South Dakota

August 10, 1983

Senator Chafee, Senator Abdnor, I'd like to thank you for holding this hearing in Aberdeen and giving me an opportunity to discuss this very important conservation issue of the pending legislation on our nation's wetlands, S. 1329 and S. 978.

My name is Thomas Klinkel. I am an Aberdeen attorney in private practice and the President of The Committee to Protect Hunting, Inc., a South Dakota nonprofit corporation which is actively involved in public interest efforts to support and strengthen conservation of our natural resources, professional, scientific wildlife management, and the best traditions of hunting, fishing and trapping. Since its incorporation in 1979 the Committee has served as the primary legislative "umbrella" organization for nearly all of South Dakota's conservation clubs and organizations. It is not a membership group as such, and consists of a 15-person Board of Directors that represents every area of the state, both landowners and city dwellers alike. Our organization was formed to fill the legal gap which existed for all of this state's conservation organizations prior to 1979: to be the "legislative" vehicle which none of those organizations were permitted to be -- in effect to help translate the conservation goals of these groups into nonpartisan "legislative" action by lobbying, conducting campaigns on ballot referendums, and by conducting litigation in the courts if necessary.

I believe that our record has not only been highly successful on these issues, but reflects a responsible approach to solving differences between competing interest groups on issues related to conservation.

There are some 125,000 licensed hunters, and 200,000 licensed fishermen in this state. I feel that our positions accurately reflect the majority viewpoint of these people.

Let me tell you quite unequivocally that we consider the wetlands issue as probably the single most important issue for conservationists in South Dakota, and one on which our organization has spent considerable time.

The value of wetlands as a crucial part of our eco-system is certainly beyond question, though often taken for granted by the public. I know that both of you, your subcommittee and the Congress have long recognized the value of wetlands for fish and wildlife, flood control, groundwater recharge and substantial recreational and commercial uses. I will not repeat the facts which support these values because many others have already, or will, go into them in detail, and I simply doubt that any respectable group would challenge them.

Rather, I'd like to turn my attention to some of the concerns that I have heard voiced in South Dakota about the federal small wetlands acquisition program and then relate those concerns to the legislation you are considering.

ONLY PERPETUAL RIGHTS IN WETLANDS
WILL ACHIEVE THE NATIONAL GOAL

Some landowners have objected to the purchasing of perpetual easements, or fee simple title, to small wetlands. Three years in a row, in 1979, 1980 and 1981, legislation was introduced in the South Dakota legislature to attempt to limit or prohibit such perpetual easements. All three years this organization led the defense of the wetland acquisitions and all three years the legislation was defeated. Sportsmen and conservationists, many of whom were landowners themselves, contacted their legislators and obtained their votes to defeat these bills. The fact that the South Dakota legislature has consistently rejected such attempts should be kept in mind by this subcommittee in assessing the strength of such opposition.

The simple fact is that nothing less than perpetual easements or fee simple purchases will achieve the national goal of preserving some of our rapidly dwindling wetlands. To acquire a lesser interest is a waste of money because it invites the eventual draining of the wetlands we now seek to protect. It may sound like a compromise, but I would submit that it begs the question. The preservation of wetlands should either be a national objective or not. That decision must be based on the value of wetlands. If they have the value so often recognized by this subcommittee and the Congress then our national program should be one of preserving them by the best means available, not the mere postponing of their eradication.

I believe that I speak for the overwhelming majority of the South Dakota sportsmen who purchase the Migratory Waterfowl Stamp that funds this program when I say that we want our money used to buy perpetual easements and fee simple title from willing sellers at fair market prices.

Much, if not all, of the opposition to perpetual easements appears to be based on selfish financial considerations. I have not yet heard any of these people challenge the importance of wetlands as a national policy.

It is true, of course, that the fair market value of a perpetual easement, or fee simple title, on a wetland was probably less when it was purchased than it would be today. So is the value of the rest of the farmland owned by these people. Should the previous owners of these landowners' farms be entitled to the difference between the original sale price and its fair market value today just because its value has inflated? Of course not. An arm's-length transaction between willing buyers and willing sellers has, and should remain, the basis for our national small wetlands acquisition program, as indeed it is for virtually all transactions in a free enterprise economy. It is apparent to me that the calls for limited term easements, for example, are either an attempt to drain currently protected wetlands or get a hand back into the federal coffers, or both. A federal program ultimately funded out of sportsmen's dollars obviously cannot both acquire wetlands and make periodic payments to landowners for inflated land values.

There is, however, a clear economic contradiction between our federal agricultural programs and tax code and our national wetland policy. It is a

fundamental contradiction that Congress needs to address soon, for by resolving it we could eliminate many of the incentives for draining wetlands while, at the same time, affirmatively responding to the financial concerns that have led some of the landowners to seek limited easements and acquisitions.

The fundamental contradiction lies in the fact that our federal agricultural programs and tax code make it significantly more advantageous for a farmer to drain wetlands, farm ^{them} and add even more to our price-depressing surpluses than to preserve a wetland.

I urge this committee to correct this anomaly. At a minimum the following steps should be taken:

1. USDA support programs based on acreage planted to particular crops should not count any acres of wetlands drained hereafter;
2. Income tax provisions that permit land developers to depreciate capital expenditures for draining and clearing wetlands should be eliminated;
3. Federal expenditures for construction, operation and maintenance of federal water resource development projects, such as the Garrison Diversion Unit, which will destroy thousands of acres of wetlands, should be re-evaluated, modified or eliminated;
4. Federal income tax deductions of up to 25% of a landowner's gross income for the construction, etc., of drainage ditches, dams, water-courses, outlets and ponds should be eliminated with respect to the wetlands we now seek to protect;
5. The 10% federal income tax deduction for capital depreciation for drain tiles, and the 10% investment credit for drain tiles should be similarly eliminated for all drain tiles used to drain wetlands.
6. Federal income tax credits should be extended to landowners who preserve wetlands on their own, including those landowners who have already sold a perpetual easement on these wetlands to the U.S. Fish & Wildlife Service.

"IN LIEU OF TAX" PAYMENTS NEED TO BE GUARANTEED

A legitimate criticism of the small wetlands program that is hurting the program here in South Dakota concerns the loss of tax revenues to county governments when wetlands are purchased by the federal government and thus taken off the tax rolls. This has a significant adverse effect on counties in South Dakota, particularly northeastern South Dakota, where the most desirable wetlands are found.

It is not fair to expect a few counties like Day County, for example, to absorb a large loss to its tax base just because it has such a dispropor-

tionate share of the wetlands we seek to preserve. The provision in the current legislation for payments to county governments "in lieu of" taxes is a laudable principle, but it has not been reliably funded, and has thus resulted in significant local resentment to the program. We cannot expect to receive the support of local landowners, taxpayers and county governments in the absence of a reliable system to reimburse these areas for the fee simple acquisitions in these areas. There is no such problem, of course, with easements because the wetlands to which they attach remain in private ownership on the tax rolls.

S. 1329 IS PREFERABLE TO S. 978

S. 1329 is an improvement to S. 978, which is Secretary Watt's bill, as I understand it, in nearly every respect. Even so, I would like to see it strengthened by incorporating the measures I have outlined above.

In addition, S. 1329 should be amended to change the formula for distributing Land and Water Conservation Fund (LWCF) monies to the states. I do not have a specific formula in mind at this time, but I am sure that the formula now in the bill would work a hardship on states like South Dakota which have a small agency budget because of our limited population and tax base. States like South Dakota need as much help as possible in view of the fact that we have a disproportionate share of the existing wetlands that need to be preserved.

The term "wetlands acquisition" in S. 1329 should be amended to require that easements be obtained in perpetuity.

S. 978 is only barely acceptable. It is more symbolic than meaningful and tends to strengthen Mr. Watt's lack of credibility among sportsmen and conservationists in this state. I do not trust him with the avalanche of details to be worked out under his bill. Although I see no way of avoiding an increase in the price of the Duck Stamp, at least S. 1329 does so gradually. S. 978's proposal to immediately double it will, in my estimate, be counterproductive by alienating some sportsmen. I hope I'm wrong, but I sometimes wonder if that isn't what the Secretary is trying to do.

S. 1329 is a good start in the right direction. It needs to go farther and I urge your continued efforts in this direction. The protection of our wetlands is an important national goal and I applaud both of your efforts for helping to realize this objective. Our organization looks forward to assisting you in this endeavor. Thank you for permitting us to present our views.

Day County Commissioners

Box 598
Webster, S.D. 57274

August 9, 1983

Senator Abnor Office
P.O. Box 588
Aberdeen, S. Dak. 57401

Dear Senator:

We, the Day County Commissioners, go on record as to appose the funding
of reauthorization of the U.S. Fish & Wildlife Wetlands Loan Act.

Orville Hein
Orville Hein, Chairman
Day County Commissioners
Webster, S.D. 57274

Kimball, S.D.

Aug. 9, 1983

Senator Abner

P.O. Box 588

Aberdeen, S.D. 57401

Dear Senator Abner:

The U.S. Fish & Wildlife Wetlands Act, is an act which the Congress should not reauthorize.

As a landowner who has easements on some of his property, I can testify that it is nothing more than the stealing of the landowner's water rights.

These easements are bad for the farmer, the local tax base, and bad for the farmer/hunter relationship.

On one occasion the

local SCS service and I tried to work with the Fish & Wildlife Service regarding a small area where a shelter belt was to be planted. The arrogance and inflexibility of the Fish & Wildlife Service was appalling.

In summary, I feel that the U. S. Fish & Wildlife Wetlands Loan Act should not be reauthorized.

Sincerely,

Marion Van Dusseldorp

P. O. # 2 Box 95

Kimball, S.D. 57355

Marion Van Dusseldorp

Kimball, S.D.

August 9, 1983

Senator Abner's Office
P.O. Box 588
Aberdeen SD 57401

Dear Senator Abner.

I am opposed to refunding the USFWS Wetland's Loan Act. I feel the easements that are in effect are already causing many farmers, including myself, untold troubles. If this Act is refunded I feel the old easements should be satisfied first. I personally feel we can use the Taxpayers money much more wisely than this.

Sincerely,

Vernon Van Dusseldays

8601/1

Box 574
Mobridge, SD 57601
July 28, 1983

Senator Jim Abdnor
4239 Dirksen Building
Washington, D. C. 20510

Dear Senator Abdnor:

I would certainly like to attend the August 10 meeting in Aberdeen concerning the purchase of private lands for waterfowl production and protection. There is a schedule conflict which will prevent me from being there.

My thinking is that if private landowners want to sell their lands for this purpose, O. K. I question if I would ever feel strongly enough about the program to allow lands to be taken through the right of eminent domain. Even though I strongly support ETSI and water development in SD, our experience has been that few landowners benefit and many suffer losses they never quite make up. I hope this will not be the case with ETSI or the Wetlands acquisition. I realize there are many factors involved so I am pleased about the public hearing.

Sincerely,

Sarah Eklo

Sarah Eklo

15 West 3rd Street
Lemmon, South Dakota 57638
August 31, 1983

Honorable John H Chafee
United States Senator
Chairman, Subcommittee On
Environmental Pollution
Dirksen Senate Office Building
Washington, D C 20510

Honorable James Abdnor
United States Senator
4327 Dirksen Senate Office Building
Washington, D C 20510

Re: Extension Of Wetlands Loan Act

Senators Chafee and Abdnor

The Grand River Sports Club of Lemmon, South Dakota thanks you Senator Abdnor for your July 21, 1983 letter (a copy is inclosed) inviting club members to join you at the August 10 public hearing in Aberdeen regarding the Wetlands Loan Act. Obviously the club was not represented, but we respectfully request you nevertheless consider these written comments.

A. PROSPECTUS OF GRAND RIVER SPORTS CLUB

The activities and concerns of the sports club concentrate around the sport hunting, fishing and recreation of upland game (including waterfowl), big game, fish, and parks in the western Grand River watershed. Club membership consists of both sportsmen and landowners; it is affiliated with the South Dakota Wildlife Federation. The membership believes it has an excellent working relationship and regular communication with the South Dakota Department Of Game, Fish And Parks (G, F & P), for example, the two entities frequently elicit information and ideas from each other concerning wildlife and fisheries management, although the G F & P implements the local projects because it has the technical proficiency and financial resources which the sport club does not.

B. LOCAL MANAGEMENT FOR SPORT HUNTING

Regarding the extension of the Wetlands Loan Act or other similar federal proposals as applied in South Dakota, the paramount interest of the sport club is clearly RESPONSIBLE WILDLIFE MANAGEMENT BY THE SOUTH DAKOTA G, F & P FOR SPORT HUNTING BY LOCAL RESIDENTS.

1. Management By South Dakota G, F & P

Other than the most general authorization and national objectives of preserving and enhancing our wetlands and waterfowl, management of the same must transpire at the local level to optimize results out of the particular circumstances of the locality. On site characteristics as ground water hydrology, climate or weather patterns and supporting vegetation, social-economic impacts and resources and the like have markedly different parameters and solutions throughout the nation. Effective management actions are not interchangeable from state to state; in fact insignificant elements in Wisconsin may be critically important in South Dakota, or the converse.

This sport club knows by experience, whether it be renovation and repair of the East Lemmon Lake dam and headwaters, establishment and management of a resident flock of giant Canada Geese, or a host of other subjects, the G, F & P has gathered the specific facts of the cases at hand, worked with local residents to formulate the proper solutions and accomplished such goals in an expedient and professional manner. Such management by federal personnel following national operations procedures would not be possible; efficiency and effectiveness of the actual day-to-day workings and operation of any federal management program when applied to South Dakota would be no better, for example, than applying the same solutions utilized for management of Canada geese in Perkins County, to the Chesepeak Bay area.

There are other reasons why local management by the G, F & P would be more effective. Management by federal employees would require duplication of efforts and costs (such as education, on-sight training, payroll and equipment) with the G, F & P which is already in operation and performing admirably.

Local personnel perform functions beyond waterfowl and wetlands management, and therefore have first hand knowledge and understanding of how to best integrate waterfowl lands (as well as how to avoid detrimental interferences) with management of other wildlife interests to elevate and broaden the return or benefits of the wetlands and nearby areas in a mutually complimentary fashion. And because local personnel have other duties, they will stay in frequent, regular contact with the wetlands, alert for immediate response to whatever needs may arise. On the otherhand, federal management of the wetlands for waterfowl, a comparatively narrow scope, would either require costly staff, or assignments that cover such an expansive region that time would permit only infrequent periodic inspections of each site -- this is not management. Furthermore, such federal waterfowl specialists would be idling during winter months when there is little waterfowl or habitat to manage.

Local employees of the G, F & P are responsive to the issues; there is no potential for inept performance or abuse and passing off the responsibility to officials in Washington, D C, or otherwise retreating.

The G, F & P personnel are locally stationed (as well as often times being locally raised and educated) and must face the issues daily, today, tomorrow and in the future; and whether present for specific duties related to wetlands, big-game or fish, they have their friends and neighbors to answer to in addition to employment duties -- this fosters responsibility and accountability.

2. Sport Hunting By Area Residents

The wetlands must be open to the public for sport hunting pursuant to regulations applicable to other lands of the state. That is, to establish a blanket system of protectionist areas, refuges or zoos in an attempt to stock pile a renewable resource is unalterably unacceptable. Let it be perfectly clear from the onset that the protectionist approach does not amount to waterfowl management; general protectionism is not tenable upon any grounds.

Protectionism or a refuge system would not receive public support in South Dakota. Certainly the sportsmen would not stand for the removal of lands available for waterfowl hunting, which is already critically limited. Nor would the sportsmen tolerate the G, F & P, which the sportsmen financially support, lending its services, personnel and equipment to "manage" a protectionist system, ie something counterproductive to justifying the existence of the G, F & P and its implementation of modern game management principles.

The hunting must also be available to local residents in a financial sense. The sports club opposes any fee hunting regarding entrance upon certain lands. The club purports such fees in nominal amount would not finance the system required to enforce it, and would therefore be a wasted exercise. Fees beyond a nominal amount would cater to wealthy nonresidents, lack public support because such lands are effectively unavailable, and the system again fail.

3. Conclusion

The unstated premise of extending the Wetlands Loan Act is to provide meaningful improvements for waterfowl; this necessarily means seeking the greatest return upon the given resources. Any analysis has to address the abilities of the management system, its cost effectiveness and public support. And as shown above, in order for such federal legislation to fulfill its premise in South Dakota, it must include responsible wildlife management by the South Dakota G, F & P for sport hunting by local residents.

The sports club supports the local management issue presented to you by Secretary Jack Merwin of the G, F & P on August 10, 1983 in Aberdeen. A corollary is authorizing legislation shall give local management ample latitude to exercise their abilities in meeting management needs, that complex and extensive federal guidelines and regulations would squelch the benefits from local management and defeat the premise.

C. OWNERSHIP OR EASEMENT

The sports club advocates the existence of the diminishing and critically limited waterfowl and wetlands habitat should be conserved and it admonishes time is of the essence, that such lands be conserved before they are diverted to other uses. Whether this is accomplished by ownership or perpetual easement is irrelevant, so long as it is done.

The sport club supports Secretary Jack Merwin's position regarding South Dakota's contribution to the national waterfowl population with existing G, F & P land ownership being an extensive financial drain upon its meager funds, and therefore federal money should support the land interests as well as their local management to accomplish a national objective.

Thank you for considering the views of the Grand River Sports Club. Please keep the club informed about the actions taken pertaining to the extension of the Wetlands Loan Act and other similar legislation.

James A. Elsing
James A Elsing, Secretary
Grand River Sports Club

cc Jack Merwin, Secretary
Dept Of G, F & P
Anderson Building
445 East Capitol Avenue
Pierre, South Dakota 57501

Richard H Meyer, Commissioner
Dept Of G, F & P
Rural Route
Sturgis, South Dakota 57785

Raymond Henning
 Raymond Henning
 P1 Box 131
 Greenville, S.D.
 Greenville, S.D. 57239

Gentlemen

Farming has areas some with
 easement on it in Northeast
 Day County, which is considered
 a prime area for methanol &
 wild life.

I would like to express my
 views on buying more methanol
 & raising the price of federal
 hunting stamps

Thank you

Raymond Henning

486-4472

32727

Route 4, Box 252
 Brookings, SD 57006
 August 16, 1983

To: Senators Chafee and Abdnor
 From: David J. Holden
 Re: The Prairie Wetlands Preservation

The prairie pothole country is more than a series of mudholes where ducks can be harvested in a hedonistic explosion of self indulgence. It is more than the golden glow reflected from the growing of wheat fields at the fullness of summer or cattle turning fat from power built into grass. It is really all of this and more. It is also marginal land that is an invitation to indulge in the benefits for hardship, pain, punishment and poverty. The people remember the droughts of 1894 and the dirty 30's. One might note that 70% of the people that once lived in pothole country left or had the privilege of experiencing failure. They remember when almost every 160A had a family and the small one room schools burst with the vitality of 30-40 youngsters. By 1940 there were 8 to 10 students and now not even the schools exist. All the old bucks wonder what happened to the children. The pioneer spirit that was once a golden promise turned into the grimness of reality and people had only graves and memories of a destroyed country. The numerous deserted homes still stand as monuments of the period.

But the prairie pothole country is a unique place. It is a life support system dependent on the hand of nature to maintain stability during the vicissitudes of cyclic drought and plenty. There are fluctuations when precipitation exceeds 30 inches and then there are those years when only 9-11 inches fall. During the good years the uplands are exploited and during the drought years the lowlands are damaged. It results in a disrupted system.

Now the world is replete with examples where marginal lands have been destroyed because the cardinal rules of land care have not been followed. The TV news is full of examples of pain, suffering, starvation and violence on land that can no longer support the people. These lands were once grasslands, potholes and covered with productive soils. Will we never learn?

The dirty 30's was an example of this insidious cycle in our country. What did we learn? We say that technology will save us. But the sad thing is we are now able to do in hundreds of years what was accomplished in thousands by the crude methods in the old world. Note that even on prime agricultural land soil is disappearing at about 1 inch every 100 years.

So there in prairie pothole country, on marginal land that probably never should have met the bite of the plow they look at next years abundance and on last years failures in terms of government support programs instead of what is happening to the soil. But when it is all over we will have proven that desertification is not only unique to the old world. The marginal lands will have been destroyed.

Yes, there is such a thing as a land ethics. The land is more than

a thing, a commodity to be used and worn out like a pickup, combine or tractor and then abandoned. It is more than an investment for speculation by exploiters whose concern is economic gains. It is the sustenance of humanity; it is the mother of species, the birthplace of mankind and it would be nice if we could learn how to attach the umbilical cord of mankind to the source of our origin and suck up the energy that flows from the planet without destroying it. Willa Cather has stated it simply:

The land belongs to the future . . .

That's the way it seems to me . . .

We come and go, but the land is always there

And the people who love it and understand it
are the people who own it -- for a little while.

It was interesting to note at the wetlands hearing that in the parade of participants there appeared a young farmer, the one with Peace Corp experience, who seemed to be concerned about our land ethics -- bless the idealism of the young. Most of the rest seemed to be buried in the depth of their own self gratification -- ducks or crops.

But it is more than ducks and crops. It is more than mudholes surrounded by cropland. It is a system of stability that supports the entire blanket of life. What will happen during the next massive drought? Ask yourself what is the back up system when drought returns. The Grapes of Wrath revisited?

Finally, marginal land is our most important challenge in land management. It is a barometer of how well we are doing. The past indicates not to well. Hopefully, our future efforts will be more enlightening.

It is hearings, research and education that are useful for us. Hopefully you will continue your search for information during the decisions for the wetlands. Remember the climates for hunger are never far off.

Thank you for the opportunity to respond for the wetlands.

Sincerely

David G. Holden

August 4, 1983

United States Senator James Abdnor
United States Senate
Washington, D.C. 20510

Honorable Senator Abdnor:

I will not be able to attend the August 10, 1983, hearing in Aberdeen, South Dakota, dealing with wetland preservation to express my support for waterfowl management.

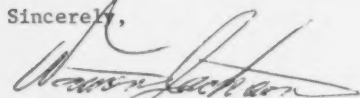
I encourage your support for the extension of the Wetlands Loan Act which authorizes the U.S. Fish and Wildlife Service to purchase waterfowl production areas in fee title.

South Dakota is fortunate to have large acreages of prairie wetlands that are extremely important to the continental waterfowl resource. Federal acquisition of wetland complexes is critical to assure their preservation. Public ownership of wetlands in South Dakota will not only benefit waterfowl, but also other species of wildlife such as pheasants. Other benefits of wetland preservation include flood control and ground water recharge.

To assure preservation of wetlands by Federal acquisition in fee title, I believe it is important that adequate in-lieu of taxes payments be made to counties. I also support an increase in the price of duck stamps.

Thank you for the invitation to the Aberdeen hearing, and for your interest in this important conservation legislation.

Sincerely,



Warren Jackson
Star Route 3, Box 21
Hermosa, SD 57744

cc: Senator John Chafee

August 5, 1983

Senator John Chafee
and
Senator James Abnorr
% Mrs. Dorothy Woods
514 S. Main
Aberdeen, South Dakota 57401

Dear SENators Chafee and Abnorr:

I will be unable to attend the Meeting scheduled for Wednesday, August 10, 1983, concerning proposed legislation with regard to Wetlands. Please consider this letter along with the testimony which you will be taking at the Hearing. I am in favor of the U.S. Fish & Wildlife's continued role in preserving wetlands. When you have been working in a conservation organization fighting for the protection of wetlands it is extremely hard to condense everything you would like to say in favor of wetlands protection into a simple letter. I will try and be as brief as possible.

That wetlands are valuable and should be protected seems to me to be beyond dispute. The habitat available for waterfowl also benefits upland game, deer, furbearers, songbirds, etc. Everyone benefits from the protection of wetlands whether they be sportsmen, outdoor enthusiasts or the general public. Wetlands provide a natural means of flood control along with pollution and sediment control, not to mention recharge of aquifers.

If wetlands are to be protected, what is the best way to accomplish this? I believe the Federal government should play an important role. I have had people tell me that the Federal government does not need to acquire wetlands because the private owner will protect them himself. This argument is just not realistic in view of the Department of the Interior's statistics showing that more than half of the wetlands in the prairie pothole county of the United States has been destroyed by drainage. Drainage of wetlands owned by private individuals continues today. Federal protection of wetlands is necessary.

As a Project Director for a South Dakota Humanities Program several years ago on wetlands acquisition, I heard all the "pros" and "cons" of the current Small Wetlands Acquisition Program. I have also met with South Dakota critics of the present Small Wetlands Acquisition Program including Don Barber (Lower James Conservancy Subdistrict) and Arlen Foster and Bernard Muller of the Citizens Against Perpetual Easements (CAPE). Our local area sportsmen's club even drove out and met with representatives from CAPE for a guided tour and listened to their complaints about the present program of acquiring wetlands. They gave us their standard arguments that easements should be shortened to 20 years, that present easements were obtained by fraud, etc. They even suggested that their group should be granted management rights to "improve" these wetlands. I came away after that meeting convinced that the only thing the critics were interested in was in draining wetlands that were presently being protected by the U.S. Fish & Wildlife Service.

Under the present system of easements the farmer retains all the rights he previously had with the exception of being prohibited from draining, filling or burning the wetland. This does not seem to be too much to ask under a wildlife easement.

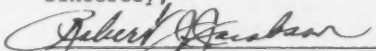
Why we need to drain wetlands to plant crops which will only further depress farm prices is beyond me. As to the charge that fraud was used in obtaining the easements, I think a U.S. Fish & Wildlife person said it best when he told CAPE that if they believed there was fraud used that they should take any alleged fraud to Court and have a judicial determination.

I believe perpetual easements along with fee acquisition is truly more efficient and will protect wetlands permanently. For those who want to go on a shorter term, there is the Waterbank program. To single wetlands out for a restriction to a number of years seems unfair. A few years ago I purchased 10 acres for wildlife habitat. This tract has a railroad right-of-way through it which amounts to approximately $2\frac{1}{2}$ acres. When the railroad paid for it they paid \$6.60 an acre. Just because it is an easement, I don't feel I am entitled to additional payments anymore than a farmer who subsequently purchases land with a wetlands easement on it. There has been strong support in our community for perpetual easements. When it has come before the S.D. Legislature, I have had no problem in gathering signatures urging our State legislators to continue perpetual easements.

In South Dakota, Waterfowl Production Areas are important to the "little guy". He can go to these areas and hunt without paying to lease hunting ground. It might be a little crowded but he always has a place he can hunt. In the WPA area we hunted last year there were 3 duck hunters and over 50 pheasant hunters on the opening day. Many of the pheasant hunters were non-residents.

As to the specifics of the proposed legislation, I would urge you to use S.B. 1329 as a starting point and adopt those recommendations presented by the National Wildlife Federation with regard to improving it. In conclusion, I would urge you to continue Federal acquisition in fee and by perpetual easement for our remaining wetlands.

Sincerely,



Robert J. Jacobson
704 Eastern Box 297
Garretson, S.D. 57030



Lake County Conservation District

604 N. Highland - Madison, South Dakota 57042 - Phone (605) 256-2094

August 12, 1983

TO: The Honorable Senator Chafee and Committee

The Lake County South Dakota Conservation Board of Supervisors wishes to thank you for the opportunity to express its views on permanent easements. In the past the people most affected by these easements have had least input in setting up the laws. We feel that Congress is uninformed as to what is being done out here by the Department of Interior. We feel that the actions of the Department of Interior is far from the original intent of Congress. When the three affected States were cut off from cost sharing for drainage and our Senator Karl Mundt was questioned on the matter, he said that land owners would be able to rent their sloughs to the Government. This isn't the case. If it were, there would be little complaint. As it now stands these easements cover not just sloughs but the land around them as well. Some of this land could be benefited by tiling. These easements also preclude irrigation.

Hugh Bennett, founder of the soil conservation movement, coined the slogan, "Use the soil according to its capabilities and treat it according to its needs." Permanent easements run contrary to this purpose.

It is the future of farming in the affected areas that is being jeopardized. The effects are little noticed now but will become more acute in fifty years. It won't bring on a new Appalachia but it works in that direction. In farming there is a continuous change. We farm differently than we did fifty years ago and have different problems. Fifty years from now the same will be said. Already our three States are at a disadvantage in that we get no cost sharing for tiling as do other States. As the law is now being implemented it is an injustice.

We have some State Officers who say that any legal deal between a willing seller and a willing buyer is OK. In the past the same was said of buying and selling slaves but it wasn't morally right. It is also not morally right that somebody who happens to own land out here to prevent the proper use of the land for future generations. Remember, we are not talking about sloughs. It is land other than sloughs.

We, the Lake County (South Dakota) Conservation Board of Supervisors, suggest that a comprehensive study be made by the agronomy and economics departments of North Dakota State University, South Dakota State University and the University of Minnesota with the intent of determining the effect of these long term easements on agriculture. We also suggest that meantime these existing easements be changed to be in effect for the duration of ownership or twenty years, whichever is the longer.

Fredrick H. Krueger
Eugene Boer
Groger Reiff
Clifford H. Lane
Ken Spatz

Lake County (South Dakota) Conservation Board
 of Supervisors

Orland Olson

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT



Lakota Audubon Society

P.O. Box D • Brookings, South Dakota 57007

STATEMENT OF THE
LAKOTA AUDUBON SOCIETY
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION
OF THE
SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
ON
WETLANDS CONSERVATION MEASURES
S. 1329 and S. 978

August 10, 1983
Aberdeen, South Dakota

THE HONORABLE SENATOR JAMES ABDNOR;
THE HONORABLE SENATOR JOHN CHAFER;

The Lakota Chapter of the National Audubon Society would like to thank you for this opportunity to express our views about wetlands and to provide our comments on S. 1329 and S. 978. Our Chapter is based out of Brookings, South Dakota and represents about 60 Audubon members located in the eastern half of our state.

Wetlands are valuable components of our environment wherever they occur. They provide extremely important habitats for migratory waterfowl, rails, shorebirds, wading birds, loons, grebes, pelicans, and hosts of other birds that are dependent on wetlands. Wetlands also provide the habitats necessary for mammals such as muskrats and mink. When dry or frozen wetlands are also important winter habitat for what are usually considered upland wildlife, such as deer and pheasant. In the appropriate setting, wetlands provide important fish spawning habitat. Not only are wetland habitats important for cultural and aesthetic reasons, but they are economically valuable to the nation as nurseries for commercially harvested fin fish and shell fish in coastal areas; for fur harvest nationwide; and for hunting and non-consumptive recreational pursuits nationwide.



This sheet is 100% reclaimed paper

In addition to being valuable to our nation's wildlife resources, wetlands are important to the integrity of our precious water resource. Wetlands reduce flooding potential in rivers and streams by detaining runoff waters. In some cases they ensure ground water recharge by allowing the detained water to slowly percolate into the ground. Wetlands also "filter" nutrients out of the water by allowing the wetland vegetation to utilize nitrogen and phosphorus and thus keep nutrients out of lakes and streams where these nutrients could cause eutrophication.

In view of the value of wetlands to our nation's people our Chapter concurs with the intent of both S. 1329 and S. 978. However, close inspection of the POWDER bill (S. 978, "Protect Our Wetlands and Duck Resources Act") shows that while it appears to be more comprehensive than S. 1329, it actually is a less desirable bill than S. 1329.

S. 978 explicitly exempts wetlands smaller than five acres in size from the so called protection afforded to wetlands by the bill. In terms of numbers of wetland basins, wetlands smaller than five acres are perhaps the most common in the prairie pothole region of both North and South Dakota. These small wetlands may, in fact, be equally as environmentally significant as the large wetlands. These small wetlands provide more space for waterfowl breeding pairs, on a per acre basis, than the larger marshes. The small wetlands also provide important invertebrate foods for breeding hens in the early spring, since the water in them warms up faster than the water in larger wetlands. There is also evidence which shows that small wetlands may be more important in groundwater recharge than the larger ones.

There are many other problems with S. 978, such as the exemption from regulation of certain wetland destructive federal highway projects, energy projects, and defense projects. (Construction of the Garrison Diversion Project, for example, will destroy tens of thousands of acres of wetlands.) However, we believe that the exclusion of wetlands of less than five acres in size is, alone, enough to justify our opposition to S. 978.

While both S. 1329 and S. 978 provide for the continuance of funding of wetland acquisition programs, we believe the provisions of S. 1329 are better than those of S. 978. In addition, S. 1329 proposes a study to determine the effect of all federal programs that either directly or indirectly contribute to wetland destruction including such things as price support programs, soil conservation programs, income tax provisions, and commodity loans and disaster assistance programs. None of these programs were considered in S. 978.

S. 978 proposed wetland protection only for those wetlands that would be destroyed by direct expenditures of certain federal funds. In fact, those programs that may destroy the most wetlands may very well be the indirect programs mentioned in S. 1329. We applaud S. 1329 for proposing that these programs be studied. Only after the federal government's true role in the destruction of wetlands is elucidated can truly serious and meaningful wetlands legislation be drafted.

For these reasons our Chapter supports the passage of S. 1329.

On behalf of the LAKOTA AUDUBON SOCIETY

Lawrence C. Novotny
Lawrence C. Novotny
President

The League of Women Voters

OF SOUTH DAKOTA

Box 57 Route 1
Brookings, South Dakota
August 4, 1983

The Honorable James Abdnor
SH-309 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Abdnor:

Your letter of July 18 concerning the Aberdeen public hearing of the Subcommittee on Environmental Pollution was forwarded to me by our State President, Judy Winter. Thank you for including us in your list of concerned groups.

After reviewing our state and national environmental positions, we find that we have no specific statements concerning wildlife habitat or production except that we favor the preservation of wetlands. We have decided, therefore, that we can not offer substantive testimony on this subject.

Thank you again for your letter. One of the League's basic concerns is in having participation by an informed citizenry. You are to be commended for bringing this hearing to South Dakota.

We are sure you will continue to keep citizen groups such as ours informed of any pertinent legislation or future meetings such as this one.

Sincerely,

Barbara Talkamp

Barbara Talkamp
Land Use Chairman
South Dakota League of Women Voters

Rt #3-Box 121

Colman, SD

7 Aug., 1983

James Abnor
514 S. Main
Aberdeen, SD

Dear Senator Abnor, -

I am in favor of you voting to continue
the wetlands easement program. We need the
wildlife and the wildlife needs the habitat!

Thank you,

Respectfully yours,

Robert E. Lee
Robert E. Lee

3552/2

Miller, Miller
and
Sebastian
Attorneys at Law

WALTER C. MILLER
BOX 67
PLANKINTON, SO DAK 57566
PHONE 942-6861

July 28, 1983

RONALD K. MILLER
MICHAEL E. SEBASTIAN
BOX 108
KIMBALL, S DAK 57565
PHONE 778-3318

Senator James Abdnor
SH-309 Hart Senate Office Building
Washington, D. C. 20510

Re: Letter of July 18, 1983
Wetlands Loan Act.

Dear Senator Abdnor:

Received your above letter, but will be unable to attend the August 10, 1983, hearing.

As an avid waterfowl hunter, I am very interested in the Wetlands Program; however, I feel that the present procedure in acquisition has been somewhat self-defeating and has resulted in the loss of wetlands for waterfowl production. I say this for the reason that the perpetual never-ending easement has resulted in many farmers not signing up their wetlands in the program and has resulted in the filling and draining of a lot of potentially good production areas. I feel that the purchase of the wetlands through the perpetual easement has probably reached all that it is going to feasibly reach and that the program should turn to a limited term easement of 25 or 50 years. If this were to happen, I am sure that you would see an enormous increase in sign up for the Wetlands Program. I realize the repurchase at the end of the term of a new easement will cause need for additional monies. However, I still think it is the proper way to increase the areas in the program and still be good for those who own the land or, more appropriately, will own the land 50, 100 or 200 years from now.

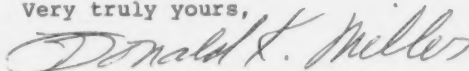
I don't know about other States, but charging admission fees at wildlife refuges is as ineffectual and as productive as the Corps of Engineers charging a fee to pick up a piece of driftwood along the Missouri River.

On another matter, the mourning dove, as I understand it, is considered a migratory bird, and its hunting is, therefore, controlled by the Federal Fish and Wildlife Service though administered by the State Game and Fish. In South Dakota, the

July 28, 1983
Senator James Abdnor
Page Two

mourning dove season opens September 1, which is after most of the birds have already migrated south. I have been informed that because of it being a migratory bird its hunting is controlled by some treaty or agreement with both Mexico and Canada, and that in order for South Dakota to open its season earlier would require a new treaty or an Act of Congress. I would appreciate any information you could give me concerning the truth of this matter because if there is an easier way to open the season earlier it should be attempted.

Very truly yours,

A handwritten signature in cursive script that reads "Donald K. Miller".

Ronald K. Miller

RKM:mak

MINNESOTA CONSERVATION FEDERATION

PUBLISHERS OF "MINNESOTA OUT-OF-DOORS"

1034 CLEVELAND AVENUE SOUTH • ST. PAUL, MINNESOTA 55116

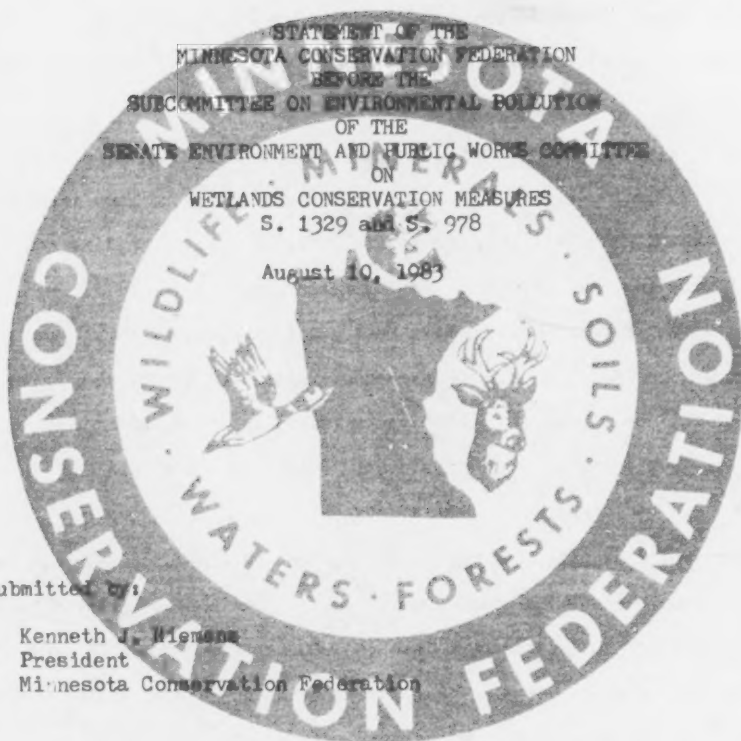
PHONE (612) 690-3077

STATEMENT OF THE
MINNESOTA CONSERVATION FEDERATION
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION
OF THE
SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
ON
WETLANDS CONSERVATION MEASURES
S. 1329 and S. 978

August 10, 1983

Submitted by:

Kenneth J. Niemans
President
Minnesota Conservation Federation



AFFILIATED WITH THE NATIONAL WILDLIFE FEDERATION

Mr. Chairman, I am Kenneth J. Hiemenz, President of the Minnesota Conservation Federation.

On behalf of the Minnesota Conservation Federation (MCF) I appreciate the opportunity to speak in support of legislation to extend the Wetlands Loan Act which authorizes the U. S. Fish and Wildlife Service (FWS) to purchase private lands for waterfowl production and protection, and respectfully request that this statement be made a part of the permanent record.

The Minnesota Conservation Federation is the states, not-for-profit, citizen conservation-education organization with some 9,000 members and supporters dedicated to the wise use and proper management of our natural resources.

Today we are talking about wetlands- the marshes, swamps and bogs found across the country - at one time considered to be useless areas, fit only for draining and filling. Fortunately, we've come to realize that wetlands are, instead, priceless natural resources.

In recent years scientists have realized that wetlands serve many vital ecological functions. Much has been written telling us about the values of wetlands. Yet, in just 4 short years, an estimated 125,000 acres of potholes - which were prime duck nesting wetlands - were drained in Minnesota and North and South Dakota between 1964 and 1968.

Every year the total acreage of our nation's wetlands decreases. It is estimated that the total average loss of wetlands in the coterminous United States from the 1950s to the 1970s was 458,000 acres per year. (Status and Trends of Wetlands and Deepwater Habitats in the Coterminous United States, 1950s to 1970s, Office of Biological Services, Washington, D.C.)

With almost ten million acres of prime habitat still unprotected, the need for accelerated wetlands acquisition grows daily.

Wetlands are one of our country's most valuable, yet least appreciated natural resources. They provide prime habitat not only for waterfowl, but also for countless species of plants and animals.

Studies of water pollution are confirming that wetlands play an important role in purifying runoff before it reaches streams or groundwater. Research is showing that wetlands could play an important role in wastewater treatment; and, I am sure you have heard the many many social values of wetlands, and the monetary values derived from wetlands so I shall not carry on.

Rather today we wish to tell you that the MCF prefers and supports Senator Chafee's bill S. 1329 and that one important component in efforts to resolve the problem of wetlands loss must be increased funding for the acquisition programs. As land prices go - so go the wetlands. Therefore a mechanism is needed to provide sufficient monies to purchase over the next ten years the 1.5 million acres of wetlands that FWS has determined most important to migratory bird conservation. In addition we do not believe the leasing of wetlands provides anywhere near the investment that perpetual easements offer. Therefore, we support easements in perpetuity. Anything less is drainage in the future paid for with the money granted for short term leases.

It is extremely important that some kind of Federal tax incentives for maintaining wetlands on private property be created. Minnesota has such a plan, although modified in form, we have a plan.

There is also the need to remove the financial incentive to drain wetlands. The current system of investment tax credits and conservation deductions and

and credits provides an incentive to drain wetlands that many landowners find hard to pass up. Often times these provisions mean the difference between profitable and unprofitable wetland drainage projects. We need a provision that would require Federal agencies to seek reasonable alternatives and practicable modifications to expenditures and financial assistance that encourage wetlands conversion.

We would also like to see S. 1329 be amended to include certain substantive provisions of Executive Order 11990 on the protection of wetlands. Section 1(a) of Executive Order 11990 addresses the role Federal agencies should have towards minimizing the destruction of wetlands.

Mr. Chairman, Wetlands are ^Arapidly vanishing valuable national resource. Lets not be the ones responsible for not retaining them.

Thank you for the opportunity to present our views and express our support for the concepts of S. 1329.

*Poche and Lee Law Office**80 East Main**Post Office Box 617**Fort Pierre, South Dakota 57532**Charles Poche, Jr.**Thomas C. Lee**Telephone:**Office 223-2572**Area Code 605*

August 15, 1983

Honorable James Abdnor
 United States Senator
 4241 Dirksen Senate Building
 Washington, DC 20510

Dear Senator Abdnor:

I am writing to you as City Attorney concerning the wetlands legislation that you are now considering.

A review of your files would show that you have been contacted numerous times and have made inquiry concerning an area that we call the Ft. Pierre Slough. This is an area that is entirely within the city limits and presently is surrounded by houses. It used to be, prior to 1907, an over flow channel of the Missouri River. By the construction of the railroad bridge in 1907, the old highway bridge in 1927, and the new highway bridge in 1962, the northerly end of it was cut off and blocked. In 1962 the Corps riprapped the west edge of the river further separating the slough from the river. Then in 1968 the Corps dredged the river adjacent to Ft. Pierre, and deposited the dredge material in the lower end, or southerly end of the slough, preventing any water from draining out. This then completely isolated the slough from any drainage of any nature either from the river or into the river.

Throughout the years the city has made application for 404 permits which included maintenance of a sewer line and construction of several roads across the slough so that water lines could be laid which were an absolute necessity to the city. Raw sewage was being dumped into the slough, but the Corps denied right of the city to construct sewers from the residences to the sewer lines because it would involve placement of fill.

In 1981 the city went ahead and constructed a road over the sewer line so they could maintain it and a road across the slough to carry water from the wells, all without a permit. They did this after the Corps failed to act on a 1977 permit which went until January 1980 without any action, and a 1981 permit that went approximately four months without action.

Honorable James Abdnor
August 15, 1983
Page 2

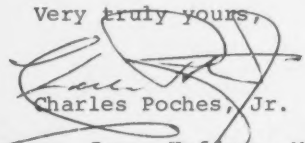
The Corps has now commenced a legal action against the city to remove the streets and to be fined up to \$10,000 per day, claiming that the area is a wetlands. This matter comes on for trial August 31 in United States Federal court. The land, other than the streets and sewer line, is owned by private individuals. In the past, the Corps has denied any responsibility for the slough or the resultant problems, but now claims that as a "wetland" without compensation to anybody.

I bring this to your attention as it is an example of the existing wetland law and the stupid and unreasonable actions of the Corps, EPA, and Fish and Wildlife Service. Under the existing law it would appear that the Corps could, and would, claim nearly every area that has typical marsh vegetation as wetlands. The cases that have been decided interpret the Congressional action to expand the Corps jurisdiction which has resulted in unbelievable situations. I would suggest that limitations be placed on the definition of wetlands so, at the least, there would have to be direct and regular water flow either from the river into the area, or from the area into the river. This would necessarily have to apply to the Clean Water Act as well.

It is a shame that the little city of Ft. Pierre has to incur the expense to defend the lawsuit and the possible penalties, in such a ridiculous situation. The city is bound to provide water, electricity, sewer and eliminate pollution, but yet by the wetlands definitions and Clean Water Act, jurisdiction of the Corps prevents us from doing so. I would like to have testified at your Aberdeen hearing and set forth this example, however, I was tied up and I would assume that your schedule of witnesses was complete. I feel so often that such hearings are dominated by the Corps and Fish and Wildlife Service, as parties fail to appear until they are involved with a lawsuit.

If there is any other information I could pass on to you, I would be happy to do so.

Very truly yours,



Charles Poches, Jr.

cc James Hoffman, Mayor

CPJ/bs

South Dakota Association of Townships

PRESIDENT:	VICE PRESIDENT:	SECRETARY:	TREASURER:
Donald Misener	James Hoglund	Marvin Schwanke	Sidney Ensberg
Strandburg, SD	Langford, SD	Watertown, SD	Toronto, SD

August 12, 1983

Sen. John Chafee
U.S. Senate Bldg.
Washington, D.C. 20013

RE: Environmental Sub-committee
Hearing, Aberdeen, SD
Held August 10th, 1983

Dear Sen. Chafee:

I am writing to you on behalf of the South Dakota Association of Townships concerning the current management program of the federal wetlands easement program.

Our Association has, at our annual meetings for the past four years supported changes in the current wetlands program. By this letter, I wish to express the Township Association's position concerning the perpetual easements in the wetlands program. It is our position that we feel perpetual easements should no longer be the only means used, but consideration be given to easements of shorter duration which could be re-negotiated. I would also strongly suggest that the perpetual easements which are now in existence be considered for re-negotiation.

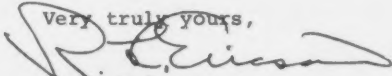
As I am sure you are aware, some of the properties involved under this management involve payment in lieu of taxes. Township governments are greatly burdened by the maintenance of roadways, and in those areas where there are wetlands, there is increased traffic on the roadways from hunters. When the government fails to pay their taxes, the burden of maintaining these roads falls unjustly and disproportionately upon the adjoining land owners. I would imagine you can see clearly the inequities of the situation.

I would therefore urge you to give your support to modification of the existing program to insure fair and equal treatment to the citizens of South Dakota.

The Township Association is not against conservation measures nor waterfowl production. However, we believe the current format is not in the best interests of the citizens of our state or other surrounding states.

If you have any questions concerning our position, please do not hesitate to contact me.

Very truly yours,


R. L. Ericsson

Atty for the SD Assn. of Twps.

RLE:so

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

Wet Lands Conservation Measures

S. 1329 and S. 978

August 10, 1983

Mr. Chairman:

I am Dr. Hollis Hall, Director of the South Dakota Extension Service. The Cooperative Extension Service, located in each state of the Union and several territories, is the educational arm of the U.S. Department of Agriculture. The Cooperative Extension Service, however, becomes involved in educational activities of other departments of the federal government as well as state agencies. I am not a student of fish and wildlife enhancement, in fact, I am not even a citizen sportsman, but I am the administrator of a state and federal agency that is interested in the well-being and the quality of life of the citizens of our state.

With that as a brief background, I wish to make a few observations as we discuss the extension of the authority for promoting the enhancement of migratory water fowl. I think that the extension of this activity by the federal and subsequently state governments is important as I see a change in society's philosophy toward wildlife protection, a change in the economics of agriculture production, and a general concern for the maintenance of the many resources that this country has.

People in the Extension community have become greatly concerned about the management of renewable resources. They have expressed this need of management of renewable resources through the Congress and have received appropriations and program direction toward this end. Currently the Renewable Resources Extension

Act funded at an annual level of two million dollars is used primarily in the management of forest lands, but it is the objective of the Extension Service and some members of Congress to expand that funding to include the management of wildlife, range, and forestry.

Within the Department of Agriculture, our parent federal agency, there is a great effort to conserve soil and water resources. From what I know of the wet lands protection activities of the Department of Interior through the U.S. Fish and Wildlife Service, these objectives are not in conflict but are supportive as we view the conservation qualities of the preservation of wet lands in the area of soil and water. There is ^{Policy} public discussion among those involved in agriculture and those outside of agriculture concerning the best use of the land resource that we have available to us in the country. Certainly the preservation of wet lands in this state and in adjoining states is a part of that discussion and should continue to be a part of that discussion of best use of our land resources *with appropriate safeguards for farm operators, wildlife resources, and local governments.*

We in South Dakota rely heavily upon our recreation and tourism business activity. Many of us recall the days of a high pheasant population in the mid-1940's. Even though wet land preservation is primarily targeted toward migratory water fowl, it provides an important habitat for our primary indigenous game bird, the pheasant.

Within the Department of Agriculture and within the agriculture community, there are discussions about the optimum level of commodity production. ~~It is no secret to all of us that we have problems with surplus commodities produced on agriculture lands.~~ Discussions centering around permanent or long-term land

retirement and the decrease of production acres has increased the discussion of other uses for those retired acres. This discussion has also relaxed the pressure for the conversion of wet lands to agriculture production purposes. I see the USDA activities in resolving the surplus problem as presenting a possibility for greater involvement and greater acceptance of wet land preservation. The economic encouragement to drain wet lands and place those lands into production become less and therefore this type of land redevelopment becomes less economical. I think that there ^{are} ~~to~~ more opportunities in the future for the development of wet land habitat.

I agree that there are some conflicts between the maintenance of wet land habitat and policies within the Department of Agriculture and within some other departments of government, but there are also some cooperative ventures that have taken place in the past that ought to be noted. Certainly the Department of Agriculture Water Bank Program was an encouraging complimentary activity. It is unfortunate that that program is no longer receiving the interest and support that it once had. Certainly if discussions about long-term land retirement become action, this will compliment wet land preservation.

As I review Senate Bills 978 and 1329, it appears that Senate Bill 1329 provides more incentives and support for the maintenance of wet lands by providing not only authorization but also funding. I am concerned within our state that the requirements of federal fund distribution is based on state activity which has been very minimal in the last few years in South Dakota. Perhaps the funds should be allocated toward the areas of greatest need, that is the traditional nesting and brooding areas of water fowl rather than based on the requirement of

state expenditures for this purpose. Various methods of allocating to states based on needs through grant proposals is another option.

I appreciate the opportunity of coming before this committee to present my views as a public administrator and a citizen who is interested in the preservation and the best use of our renewable resources in our state and nation. I commend you, Mr. Chairman, for bringing these hearings to the country and for your farsightedness in the sponsoring of this legislation.

Thank you.

STATEMENT OF THE SOUTH DAKOTA
STOCKGROWERS ASSOCIATION

ON THE EXTENSION OF THE
WETLANDS LOAN ACT

TO

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

AUGUST 10, 1983 -- ABERDEEN
9:30 AM -- SHERATON INN

SENATOR JOHN CHAFEE (R-R1), CHAIRMAN

The South Dakota Stockgrowers Association would strongly urge the Congress and this Committee to focus on lands now controlled by Federal Agencies and in doing so severally restrict any increases of Federal Control of any land -- including Wet Land Easements to minor parcels on a case-by-case basis only.

We do not believe perpetual Wet Land Easements should continue to be funded or continue to be acquired as the only easement option to the landowner by Federal Law.

LAND ACQUISITION -- There is money available by Federal agencies for the purchase of private land for wildlife propagation.

The South Dakota Stockgrowers Association encourages the leasing of such land for the purpose of wildlife propagation instead of the purchase by any Federal or South Dakota agency.

WILD LIFE HABITAT -- There is a proposal (submitted by the governor of South Dakota and the Department of Game, Fish and Parks) wherein the Corps of Engineers would acquire more privately owned land for wildlife habitat to replace the habitat lost by flooding

- 2 -

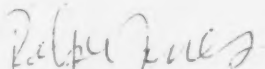
when the dams were built on the Missouri River.

The wildlife that was displaced by the Missouri River dams has adequately relocated on private and public lands.

Some species of wildlife are more abundant now than before these Missouri River dams were built.

The United States Corps of Engineers now have control of many thousands of acres adjacent to the Missouri River reservoirs that can and is being developed into wildlife habitat.

The South Dakota Stockgrowers Association oppose the acquiring of more privately owned lands for wildlife habitat either by governmental agency purchase or permanent easement.


Ralph Jones, President
South Dakota Stockgrowers Association
Box 177
Midland, South Dakota 57552

RJ/dh

WILLIS C. SUTLIFF, M.D., F.A.A.P.
PEDIATRICIAN
CLOCK TOWER PLAZA, SUITE 215
2525 WEST MAIN
RAPID CITY, SOUTH DAKOTA 57701
—
TELEPHONE 341-2999

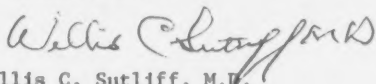
September 1, 1983

Senator James Abdnor
309 Senate Office Building
Washington, D.C. 20510

Dear Senator Abdnor:

Thank you for your letter regarding the Wetlands Loan Act. I will not be able to attend your meeting in Aberdeen, but very definitely feel that it is vitally important that we continue with the program to purchase private land for waterfowl production and protection. I think it is vital that we take care of the natural resources in the state of South Dakota, and this certainly aids this effort.

Sincerely yours,

A handwritten signature in cursive script, reading "Willis C. Sutliff".

Willis C. Sutliff, M.D.

WCS/mm

Senator John Chafee,
WASHINGTON DC.

10:30pm 10 Aug 83

Dear Sir,

It may seem as though I am a die-hard, but public service does not end with the adjournment of the meeting. I would like you to read through my written testimony that I submitted today at Aberdeen. I wish that I had taken the time to read it verbatim, but I felt it my responsibility to help the meeting move along as quickly as possible. Please, if you have any questions, contact me and I will be more than happy to share my views with you. What I have seen and heard as a farmer listening to other farmers, and watching their actions, tells me that greed motivates people, probably including me. I think I try to keep it under control.

Please remember too, that almost all of the negative comments received at Aberdeen August 10 were from people who live in and around Day County S.D. This County is blessed naturally with a very large acreage of lakes and sloughs and the ducks would ^{probably} be there regardless of the easement & purchase program. I mentioned to my family that ~~with~~ with all the problems in Day County, maybe it best if they just seced from the union. Just joking! But I really feel that if farmers knew the dollar value of their wetlands in the easement program, ~~many~~ ^{most} would jump at the opportunity.

A 20 year easement or an easement with change of ownership termination would only give greed the opportunity to worm its way into our lives. Is it possibly true that most of these persons condemning the perpetual easement, are sore only ~~because~~ or at least partly ^{sore} because they did not receive the payment? Sure they are stuck with the terms of the easement, but they and only they got themselves into it by purchase or choosing to keep inherited lands ^{affected by the easement}. I ask again that you give my written testimony some ~~for~~ scrutiny, use it if need be ~~to~~ your committee hearing and contact me if you have any questions.

I have enclosed another 2 pages dealing with another vitally important issue.

Thank you,
Sincerely,
JAMES STIEGELMEIER
RR1 Box 92
SELBY, SD.
57472

July 29- 83
 1109 So State
 Abilene TX

Senator James Abdnor.
 Wash. Dc

Dear Senator:

your letter of July 18th
 concerning the Wetlands
 Loan Act.

I do not have a great
 deal of back ground on the
 issue.

The news media gives
 only what they want to,
 most of the time.

However my feeling are -
 if we want to extend
 the Wetlands Loan act -
 if we can do it without
 raising taxes or fees or
 if it ~~will~~ will in no way
 indirectly increase our
 debt.

2 -

In other words when our
national Debt is at zero
and US is debt free then
it should be considered.

without increasing the price
of duck stamp's charging
admission fees at wild
life refuges.

All I am saying lets
stop spending money we
don't have.

again you may have
info I do not have.

Sincerely

Alton Westby
1109 So state
Abundien, DQ
57401



Whetstone Sportsmen & Conservation Club



P.O. Box 574

Milbank, South Dakota 57252

August 6, 1983

The Honorable Senator Chaffee
United States Senate
Washington, DC.

Dear Senator Chaffee,

We the members of the Whetstone Sportsmen & Conservation Club wish to go on record that we support the wetlands easement program and would like to see the continuation of this program. We also support the purchase of additional wetlands.

We support the perpetual easement program. This is one of the best ways to preserve the wetland we now have for future generations.

We have about eighty members in our club of which approximately half of them are farmers and landowners.

Yours truly,

David Dockter

David Dockter, President

ZUGER & BUCKLIN

CERAMICISTS AND ATTORNEYS AT LAW

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BISMARCK N.D. 58502 1695

STREET ADDRESS 5TH AT ROSSER
PROVIDENT LIFE BLDG
BISMARCK N.D. 58502 1695

TELEPHONE (701) 223 2711

ALFRED ZUGER
1895-1948
JOHN A. ZUGER
LEONARD H. BUCKLIN
JOHN A. ZUGER JR.
WILLIAM P. ZUGER
LYLE W. KIRKES
ROBERT V. BOLINSKE
THOMAS O. SMITH
MURRAY G. SAGSVEEN
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MEMORANDUM

TO: Game and Fish Commissioner Dale Henegar,
State Chairman, Waterfowl Production
Area Easement Delineation Committee

Agriculture Commissioner Kent Jones,
Committee Member

FR: Special Assistant Attorney General
Murray G. Sagsveen, Committee Member

DT: May 3, 1983

RE: Current Status of Waterfowl Production Area Issues

I. INTRODUCTION

This Memorandum will address many of the controversial issues involving waterfowl production area easements. It is written from my perspective as a member of the federal-state waterfowl production area easement delineation committee and as a Special Assistant Attorney General representing the State, the Garrison Diversion Conservancy District, and several water resource districts.

The issues will be addressed in the following order:

General Background
Landowner/FWS Conflicts
Water Resource District-FWS Conflicts
The Easement Delineation Program
Payments in Lieu of Taxes
Status of the FWS Acquisition Program
Protect our Wetlands and Duck Resources System (POWDRS)
Farmland Protection Policy Act
Interim Study (HCR3091)

II. RELEVANT LEGAL AND FACTUAL BACKGROUND

The 1929 Migratory Bird Conservation Act¹ authorizes the acquisition of land for inviolate migratory bird sanctuaries (refuges). Section 7 of the Act contains an unusual requirement: the federal government may not acquire land unless a state consents "by law."² The state of North Dakota gave its consent in 1931.³

The 1934 Migratory Bird Hunting Stamp Act⁴ soon provided a funding mechanism for the refuge acquisition program. Migratory bird hunting and conservation stamps (duck stamps) were sold to generate revenue for the newly created Migratory Bird Conservation Fund.⁵

The Secretary of the Interior was given flexibility to acquire land or interests in lands for "waterfowl production areas" in a 1958 amendment to the Migratory Bird Hunting Stamp Act.⁶ Unlike lands acquired under the Migratory Bird Conservation Act, waterfowl production areas are not "inviolate sanctuaries." The amendment also provided that the Secretary of the Interior could acquire such waterfowl production areas without the state legislative consent contemplated in the 1929 Act.

Congress was soon informed that a "crash program" for the acquisition of waterfowl production areas was desirable but that normal revenues to the Migratory Bird Conservation Fund could not finance a massive land acquisition program. Congress, accordingly, determined in 1961 that a \$105 million interest-free loan to the Fund was necessary. Congress, however, also recognized that the tradition of state involvement should be extended to all acquisitions involving moneys from the Migratory Bird Conservation Fund whether for "inviolate sanctuaries" or "waterfowl production areas." The legislation, as finally enacted, stated:

no land shall be acquired with moneys from the migratory bird conservation fund unless the acquisition thereof has been approved by the Governor of the State or appropriate State agency.⁷

Whereas the state consent contemplated by the 1929 Migratory Bird Conservation Act was legislative, the 1961 Act required approval by the state governor or the appropriate state agency.

¹ Act of February 18, 1929, 45 Stat. 1222; 16 U.S.C. §715 et. seq.

² 45 Stat. 1223; 16 U.S.C. §715f.

³ Ch. 207, 1931 North Dakota Session Laws.

⁴ Act of March 16, 1934; 48 Stat. 451; 16 U.S.C. §718 et. seq.

⁵ 48 Stat. 451; 16 U.S.C. §718d.

⁶ Act of August 1, 1958; 72 Stat. 486, 487; 16 U.S.C. §718d(c).

⁷ Act of October 4, 1961; Pub. L. 87-383; 75 Stat. 813; 16 U.S.C. §715k-5.

Both consents are required for the acquisition of inviolate sanctuaries under the Migratory Bird Conservation Act, but state legislative consent is not necessary for the acquisition of waterfowl production areas.

Governor William L. Guy was immediately contacted in 1961 concerning the federal plans for acquisition of waterfowl production areas in North Dakota. At the request of officials of the United States Fish and Wildlife Service (FWS), Department of the Interior, Governor Guy approved the acquisition of about 1.2 million acres of easements in North Dakota for waterfowl production area purposes.⁸

The waterfowl production area acquisition program encountered one problem immediately: acquisition of fee waterfowl production areas by the FWS caused financial problems for the affected political subdivision. Governor Guy, therefore, announced that he would not approve the acquisition of fee waterfowl production areas until suitable legislation was enacted to make payments to affected political subdivision for the diminished tax base. Governor Guy's efforts were partially responsible for the passage of ameliorating legislation in 1964

⁸ Governor Guy reserved the right to individually review each proposed fee acquisition of a waterfowl production area. Affidavit of William L. Guy dated August 3, 1979, para. 3.

to make a more equitable distribution of revenues derived from lands of the National Wildlife Refuge System.⁹

Notwithstanding the initial problems, the federal-state program for the acquisition of waterfowl production areas was successful for many years. The federal government acquired interests in 5.3 million acres (about 8,300 square miles) of land in North Dakota for the benefit of migratory waterfowl, and most of the acquisitions have been within the past twenty years.¹⁰

Serious opposition to the federal acquisition of waterfowl production areas in North Dakota, however, developed in recent years. Four examples follow:

⁹ Act of August 30, 1964; Pub. L. 88-523; 78 Stat. 701; 16 U.S.C. §715s. The 1964 legislation also made waterfowl production areas a part of the National Wildlife Refuge System. The National Wildlife Refuge System was redefined in the "National Wildlife Refuge System Administration Act of 1966":

For the purpose of consolidating the authorities relating to the various categories of areas that are administered by the Secretary of the Interior for the conservation of fish and wildlife, including species that are threatened with extinction, all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas are hereby designated as the "National Wildlife Refuge System" (referred to herein as the "System") which shall be subject to the provisions of this section [Emphasis added]

Act of October 15, 1966; Pub.L. 89-669; 80 Stat. 926; 927; 16 U.S.C. §668dd. The short title was provided in §12(f) of the Act of December 5, 1969. Inclusion of waterfowl production areas in the National Wildlife Refuge System had a profound impact on the acquisition programs.

¹⁰ This acreage includes 418,570 acres owned in fee for National Wildlife Refuges and Waterfowl Production Areas and 4,855,851 acres of privately owned land over which the United States has easement interests for waterfowl production areas. Easements covering 4,788,300 acres have been acquired since passage of the 1958 authorization. Interrogatory Answers No. 2, North Dakota v. United States, ____ U.S. ____ (1983).

1. Incorporation of Waterfowl Production Areas Into The National Wildlife Refuge System

Governors Guy and Link approved "the acquisition of easements by the United States of America . . . for Waterfowl Production Area purposes." The form easement utilized by FWS personnel (prior to 1976) stated, in part:

The parties of the first part, for themselves and for their heirs, successors and assigns, covenant and agree that they will cooperate in the maintenance of the aforesaid lands as a waterfowl production area by not draining or permitting the draining, through the transfer of appurtenant water rights or otherwise, of any surface water including lakes, ponds, marshes, sloughs, swales, swamps, or potholes, now existing or recurring due to natural causes on the above-described tract, by ditching or any other means; by not filling in with earth or any other material or leveling, any part or portion of the above-described tract on which surface water or marsh vegetation is now existing or hereafter recurs due to natural causes; and by not burning any areas covered with marsh vegetation. It is understood and agreed that this indenture imposes no other obligations or restrictions upon the parties of the first part and that neither they nor their successors, assigns, lessees, or any other person or party claiming under them shall in any way be restricted from carrying on farming practices such as grazing at any time, hay cutting, plowing, working and cropping wetlands when the same are dry of natural causes, and that they may utilize all of the subject lands in the customary manner except for the draining, filling, leveling, and burning provisions mentioned above. [Emphasis supplied]

By their consents to acquisitions on such terms, the governors only authorized, at most, a contractual agreement that a landowner would not drain, burn, or fill wetlands--a negative easement in gross.¹¹

However, the enactment of the National Wildlife Refuge System Administration Act of 1966¹² created an entirely different situation. The Act declared that waterfowl production areas are a part of the National Wildlife Refuge System. "Easement violations" by landowners on privately owned land are no longer considered merely contractual transgressions, they are considered

¹¹ United States v. Albrecht, 496 F.2d 906, 909-910 (8th Cir. 1974).

¹² Pub.L. 89-669; 80 Stat. 927

crimes and punished accordingly.¹³ Further, and notwithstanding disclaimers on the face of the easement document, the United States now claims sweeping regulatory jurisdiction over the private lands subject to such easements.¹⁴

2. Misrepresentation by Federal Acquisition Personnel

Landowners were assured, during negotiations when waterfowl production area easements were acquired, that certain local farming practices (e.g., the use of farm implements to drain shallow sloughs) would be authorized. However, when the landowners continued these farming practices after conveying the easements, enforcement action was threatened.

In Werner v. U.S. Dept. of Interior, Fish and Wildlife, 581 F.2d 168, 169-170 (8th Cir. 1978), the Court of Appeals said:

In 1964, appellants or their predecessors in title were approached by Roy Brasch and William Resman, two employees of the Fish and Wildlife Service assigned to negotiate with local landowners to acquire wetlands easements. It is undisputed that in their negotiations with appellants, Brasch and Resman made oral representations to the effect that certain local farming practices, such as the use of plow furrows to drain shallow potholes and the burning of certain sloughs, would still be permitted under the terms of the proposed easements. These oral representations did not accord with the terms of the written easements which appellants and others ultimately signed. *** Appellants claim that they were induced to sell the easements to the Fish and Wildlife Service by the false oral representations by Brasch and Resman. *** By the late 1960's the Fish and Wildlife Service began enforcement against violations of the waterfowl easements created by certain farming practices.

¹³ Prosecutions are based on 16 U.S.C. §668dd(c) which provides, in part: "No person shall knowingly disturb, injure, cut, burn, remove, destroy, or possess any real or personal property of the United States, including natural growth, in any area of the [National Wildlife Refuge] System." United States of America v. Seest, 631 F.2d 107 (8th Cir. 1980).

¹⁴ The federal claim is best understood by reviewing the regulations which govern the National Wildlife Refuge System at 50 CFR Subchapter C (1981). For example, the definitions in 50 CFR §25.12 indicate that private land subject to a waterfowl production area easement is a national wildlife refuge. In addition, 50 CFR Part 26 virtually prohibits any farming and ranching activity on private land subject to a waterfowl production area easement.

The Court of Appeals, in Werner, declared that the written easements, rather than the oral representations, were controlling. The Court's decision did nothing to alleviate the illwill that was created by the misrepresentations.

3. The Starkweather Watershed Project.

The Devils Lake Basin was the scene for additional opposition to the FWS when, in late 1972, the Department of the Interior withdrew its support for the Starkweather Watershed Project. The Starkweather Watershed Project problem was responsible, in my opinion, for the 1975 interim legislative review, the 1977 State laws, and much of the continuing acrimony between the State and the FWS. Accordingly, a thorough review of that background may be useful:¹⁵

Flood control efforts were initiated in the Devils Lake area soon after settlement. However, state agency records do not contain significant information about activities prior to 1951.

A January 5, 1951, memorandum to the U.S. Soil Conservation Service (SCS) indicates landowners in Ramsey County filed a petition with the Ramsey County Drain Board in 1950 for a flood control project. In May 1951, a State Water Commission (SWC) memorandum outlined a specific proposal for a channel from Dry Lake to Devils Lake.

The SWC, on April 25, 1955, passed a resolution requesting the Corps of Engineers (Corps) to "plan and construct facilities which will prevent the flooding of the lands within the [Devils Lake Basin]." However, proposals by the Corps later fell into disfavor and were abandoned.

The North Dakota Game and Fish Department, the SCS, the Bureau of Sport Fisheries and Wildlife (FWS) and the SWC executed a declaration of intent on February 10, 1966, for the preliminary investigation of the feasibility of development of a watershed plan for the Edmore-Starkweather Watershed. Over a year later, on September 8, 1967, the SCS indicated by letter that it was authorized to provide detailed planning assistance for watershed management in the Starkweather Watershed.

¹⁵ Letter dated February 22, 1983, to Governor Allen I. Olson from Murray G. Sagsveen.

Correspondence from the FWS indicates clearly did not favor any Starkweather Watershed project, but early federal, state and local attempts to resolve the flooding problem in the Devils Lake Basin resulted in "The Starkweather Watershed Preliminary Planning Criteria" which was executed by the Starkweather Watershed Sponsoring Group, the FWS, the SCS, the ND G&F, and the SWC. Among other things, the agreement provided for best management practices on farmland and acquisition of wetlands. In addition, the agreement stated: Wetlands to be preserved and areas needed for mitigation development will be acquired by easement or purchase for each construction entity or segment before construction bids are let."

Specific terms for a mitigation plan were subsequently developed in a document entitled "Agreement on Criteria for Wetlands Acquisition in the Starkweather Watershed." ***

Pursuant to the agreement, wetlands were acquired in the Watershed. In May 1972, Governor Guy was advised by the regional director of the FWS that the wetland acquisition goal had been met. An article in the May 30, 1972, Devils Lake Journal stated:

BISMARCK--Travis Roberts, regional director of the federal Bureau of Sport Fisheries and Wildlife (BSFW), told Gov. William L. Guy today that the bureau has acquired its share of wetland credit acres needed for the Starkweather Watershed project north of Devils Lake. Roberts met with Guy, State Game and Fish Commissioner Russell Stuart and State Water Commission Secretary Milo Hoisveen, according to the Associated Press.

Roberts disclosed that BSFW had acquired the needed wetlands, along with 2,000 acres previously brought under easement by the Sweetwater-Dry Lake Water Management District to complete the goal of 13,500 wetland credit acres set for the BSFW in the planning of the watershed project.

"I am pleased that after so many years of work and planning, the Starkweather project can now proceed in earnest," the governor said.

The acquisition of the required wetland credit acres, clears a major obstacle out of the path of the Starkweather Watershed project. The wetlands preservation measures have been one of the more controversial aspects of the channel improvement and flood control project since its inception many years ago.

Related to Starkweather was the proposed federal acquisition for the Lake Alice National Wildlife Refuge. Governor Guy authorized the acquisition in June 1972 The authorization was based upon

the condition that the bureau [FWS] recognize the need for comprehensive regional water resource and related land resource planning and development and accept the responsibility to work with all agencies involved at the national, state, and local level in the interest of total water management in order to minimize flood damage and to provide the maximum benefits from those water resources and related lands for the majority of our citizens.

However, in December of the same year the Department of the Interior reversed its position and objected to the project. A December 12, 1972, letter from Secretary of the Interior Morton to the Secretary of Agriculture Butz stated, in part:

The Starkweather Watershed Project, Ramsey and Cavalier Counties, North Dakota, presently being planned under the authority of P.L. 83-566, poses problems of grave concern to this Department

Specifically, and of greatest concern, the Starkweather Project will cause systematic and unwarranted losses of natural prairie marsh resources in the pothole area of North America. In anticipation of the construction of this project, the Bureau of Sport Fisheries and Wildlife has conducted an accelerated program of wetland acquisition. By purchasing easements or fee title with Duck Stamp funds the Bureau has insured the preservation of 6,472 acres of wetlands out of the 18,400 acres that still remain

undrained within the Starkweather watershed, this in accordance with an agreement between the project sponsors and the Bureau. The project sponsors had agreed to preserve an additional 2,000 acres, but it appears that only about 1,360 of these have been protected to date.

In our further review of the project and the draft environmental statement we find that the ultimate impact would be far greater than that of the Starkweather watershed alone. The channels to be built for the Starkweather Project would also provide outlets for the drainage of the Edmore watershed as well as the area lying between Edmore and Starkweather. An additional 27,300 acres of top quality wetlands could be drained, a factor which the draft environmental statement fails to consider.

We estimate that the Starkweather Project could result in the loss of up to 71 percent of the remaining wetlands in the Starkweather-Edmore drainage area. Furthermore, it would reduce the water levels of Dry Lake and the lakes and marshes to the west, including our recently acquired Federal wildlife refuge at Lake Alice

In conclusion, we believe that there are vital environmental factors pertaining to the Starkweather Project which gives this Department strong reason to oppose it in its present form. At the very least we feel that the circumstances require a thorough reevaluation of the project, its relationship to projects and programs of other Departments, its mitigation features and alternative ways of accomplishing its goals.

The SCS work on the project was suspended nearly a year later, on November 9, 1973.

Immediately thereafter, on November 21, 1973, Governor Link wrote to Secretary Morton expressing his dismay about the Department of Interior's new position and lack of good faith. He said, in part:

I have reviewed the history of the Starkweather-Edmore Watershed Project and it is with a great sense of disappointment that I learn of the suspension of this project due to the continuing opposition by the Bureau of Sport Fisheries and Wildlife, United States Department of the Interior.

As you know, continuing efforts have been made for nearly twenty years by the local water management districts to resolve any conflicts involved and to proceed with the construction of this project.

On March 16, 1970, Mr. James McBroom of the Bureau of Sport Fisheries and Wildlife stated in a letter to former Governor Guy, "If all parties to the Agreement carry out their work in good faith, we should have the needed flood protection there plus wetland preservation for waterfowl. It will be a model for the whole nation."

In June of 1972, Mr. Travis Roberts of the Bureau of Sport Fisheries and Wildlife informed the Soil Conservation Service that wetland acquisition was completed. I must express to you my regret that the Department of the Interior felt it must recede from this notice of approval.

Assistant Secretary Reed's position that he was not bound by previous decisions was very surprising to many North Dakotans who had previously accepted, in good faith, agreements with the Bureau of Sport Fisheries and Wildlife that they assumed would be complied with on both sides.

The local sponsors of this project believe that if this project is to be stopped, the easements and land purchased for mitigation by the Bureau of Sport Fisheries and Wildlife should be released. The Ramsey County Commissioners approved the sale of these lands on the basis that this land would be counted as mitigation for construction and completion of the Starkweather Watershed. They believe that if the Bureau now withdraws its previous approval, the easements and

purchased land obtained with the understanding that the project would be approved should be returned to the local landowners.

On a personal note, I regret the necessity of sending this letter to you. I had hoped that this entire matter could be resolved with good faith being exhibited on both sides.

The responsive position is summarized in a March 22, 1974, article in the Devils Lake Journal:

The U.S. Department of Interior has stated its opposition to the release of wetland easements which were acquired as part of the agreement for the Starkweather Watershed Project in Ramsey and Cavalier counties.

In a letter to North Dakota Sen. Milton R. Young (R), Curtis Bohlen, deputy assistant secretary for Fish and Wildlife and Parks, said fee and easement purchases "were individual transactions with landowners, separate and apart from the overall agreement." He added that while the watershed agreement was instrumental in obtaining former Gov. William Guy's approval of the wetland purchases, the Interior Department sees no justification for disposing of these lands since they still serve their program purpose--preservation of wetland habitat.

Bohlen noted that Interior reconsidered all aspects of the Starkweather project during a review of the environmental impact statement. He said that Interior believes the project would result in "much broader and widespread habitat degradation" than was originally believed.

"We understand the local flooding problems," Bohlen wrote, "but we must conclude that alternative solutions that would be less environmentally damaging were not given adequate consideration consideration in project formulation."

Bohlen added that Interior believes early decisions made with regard to the Starkweather project were "injurious to the national interest" and he said every attempt must be made to take corrective action.

Governor Link's concern about Starkweather led to the creation of a special committee to evaluate the problem in 1974. Concurrent legislative concern about Starkweather subsequently resulted in the creation of a statutory committee--the Devils Lake Basin Advisory Committee. Ch. 577, S.L. 1975. The Legislative Assembly also, the same year, urged the SCS to participate in planning concerning the Devils Lake Basin. SCR 4040, S.L. 1975. In addition, \$600,000 was appropriated for the Channel "A" project. Ch. 38, S.L. 1975. The Devils Lake Basin Advisory Committee effort was continued from 1977-1979. Ch. 574, S.L. 1977.

A portion of the project was later constructed without federal assistance--and despite federal interference (Section IV, *infra*).

The State Conservationist has recently advised that the Starkweather Watershed Project was in the deauthorization process.¹⁶ Senator Mark Andrews subsequently contacted the Secretary of the Interior about the interests in land which were acquired for mitigation purposes. A responsive letter from the Department stated, in part:¹⁷

This responds to your February 24 letter to Secretary Watt on behalf of Mr. Robert Garske, Chairman of the Ramsey County Water Management Resource District, North Dakota, concerning the Starkweather Watershed Project. Specifically, Mr. Garske asks that wildlife lands acquired to mitigate impacts of the Department of Agriculture's (Agriculture) Starkweather Project be credited to the mitigation requirement of the Department of the Interior's (Interior) Garrison Diversion Unit (GDU) project.

I would like to clarify the relationship between the Fish and Wildlife Service's (Service) land acquisitions in the Starkweather Watershed and land acquisitions associated with Agriculture's Starkweather Project, particularly with respect to the approximately 13,500 acres that were targeted for acquisition of wetlands for the purpose of preserving them from drainage into

¹⁶ Letter dated January 19, 1983, from J. Michael Nethery, State Conservationist, to Ramsey County Water Resource District.

¹⁷ Letter dated March 26, 1983, from Assistant Secretary G. Ray Arnett to Senator Andrews.

project facilities. It is important to understand that for some time prior to the planning for the Starkweather Watershed, the Service was acquiring wetlands under the Small Wetlands Acquisition Program (SWAP). This program embraced not only the Starkweather Watershed, but the entire Prairie Pothole Region.

It was simply a coincidence that the SWAP effort was in place and ongoing at the time the Starkweather Watershed Project was being formulated. It was, however, by design that the SWAP acquisition goals were made to complement those of the watershed project. Thus, it was agreed by all parties that fee and easement acquisitions by the Service under SWAP would count toward the mitigation goal (13,500 acres) for the Starkweather Watershed Project. Consequently, landowners had the choice of selecting binding Service easements or local water board easements, all on a willing seller basis. Most landowners selected Service easements.

Mr. Gordon Berg, then Chairman of the Starkweather Planning Committee, clearly stated in March 1970 that Service easements "would be effective (remain in effect) . . . , whether the project gets enough wetlands or not." On the other hand, local water board easements (about 2,000 acres) acquired as part of the mitigation goal, were contingent upon project initiation. The easements between the sponsors and landowners as noted by Mr. Berg, ". . . will be effective only if the construction is started on the project." The local sponsors' easements therefore are null and void, and in essence, do not exist. Clearly, there is a major and significant distinction between Service fee and easement acquisitions and the easements of local sponsors.

Mr. Garske also asks that the 8,000 acres of land at Lake Alice National Wildlife Refuge be credited to GDU, since he believes it was part of the Starkweather agreement. It is my understanding that there is no mention of any such condition in the documents regarding the project, and we are unaware of any other agreements on the point. Accordingly, we have no basis for crediting these lands to mitigation for GDU.

Mr. Garske also indicates that the Service withdrew its support of the Starkweather Project. Actually, the Department of the Interior asked for a full reevaluation of the project. The Department of Agriculture rejected this approach and withdrew the assistance for

planning after comments by Interior and other Federal agencies were received on the Starkweather Watershed Environmental Impact Statement.

In summary, since local water board easements do not actually exist, since Service easements were to remain in effect regardless of the outcome of the Starkweather Project, and since State approval of Lake Alice NWR was not contingent upon construction of the Starkweather Project, we cannot agree to Mr. Garske's proposals We hope this information will help clarify and settle this matter.

4. Controversies Concerning the Garrison Diversion Unit.

When the Garrison Diversion Unit was confirmed and approved in 1965, a fish and wildlife mitigation and enhancement plan was a part of the package. The authorized plan for the Initial Stage of the Garrison Diversion Unit contemplated the acquisition of 36 large fish and wildlife areas, totaling 146,530 acres, which would receive an assured water supply from project facilities. Pursuant to the plan, the State of North Dakota (through the Garrison Diversion Conservancy District, a political subdivision of the State) conveyed 15,910 acres of public land to the United States in 1971 (a major portion of West Bay, Devils Lake).

During 1974-1976, the FWS rejected the authorized mitigation and enhancement plan for the Garrison Diversion Unit and unilaterally adopted a "new concept" plan. The "new concept" required the acquisition of cropland for the restoration of drained wetlands whereas the authorized plan contemplated the acquisition of substantial public land and existing wetlands. In addition, the United States elected to keep the 15,910 acres of public land conveyed in 1971, but refused to give appropriate credit for the retained land. The United States District Court declared in 1981 that appropriate acreage credit must be given for the land conveyed to and retained by the United States. Board of Directors, Garrison Diversion Conservancy District v. Andrus, A2-80-22 (D.N.D. March 18, 1981).

The federal-state disputes led to a two-year legislative review of the state policy concerning federal land acquisitions in North Dakota.¹⁸ The legislative review, in turn, led to a major shift in state policy. Legislation was enacted which:

¹⁸ Senate Concurrent Resolution 4048, 1975 North Dakota Session Laws.

1. Withdrew unconditional consent to federal refuge acquisitions under the Migratory Bird Conservation Act.¹⁹

2. Established procedures for public participation in the decision-making process concerning federal fee and easement acquisitions.²⁰

3. Placed certain limitations on easements acquired by the United States with moneys from the Migratory Bird Conservation Fund.²¹

4. Provided that state consent to federal acquisitions for migratory bird refuges would be nullified if the Department of the Interior did not "agree to and comply with" the limitations placed upon easement acquisitions.²²

5. Limited all easements in North Dakota to 99 years and required that all easements "shall be properly described."²³

Passage of the 1977 legislation evoked an immediate critical response by federal officials and others. Subsequent discussions between state and federal officials, however, were unproductive and the Secretary of the Interior terminated the waterfowl production area easement program in North Dakota. This coincided with a policy statement by the Governor of North Dakota:

"I will not approve further wetlands acquisitions by the Fish and Wildlife Service, pursuant to 16 U.S.C. §715k-5, until all mitigation and enhancement lands are acquired for the Garrison Diversion Unit."²⁴

¹⁹ The conditional consent was later suspended until December 31, 1985. See §20.1-02-18.3 as amended by HB1650 (1983).

²⁰ See §20.1-02-18.1

²¹ See §20.1-02-18.2

²² See §20.1-02-18.2

²³ See §47-05-02.1

²⁴ The Governor and the Secretary could not agree on modifications to the fish and wildlife mitigation plan for the Garrison Diversion Unit which the Secretary had placed on the "hit list" in 1977. Although the Garrison Diversion Unit was authorized by the Flood Control Act of 1944 (58 Stat. 887) and "confirmed and approved" in 1965 (79 Stat. 433), it was administratively deauthorized by Secretary Andrus in 1977. National Audubon Society, Inc. v. Andrus, No. 76-0943 (D.D.C. May 6, 1981).

The United States filed a complaint to challenge the 1977 state laws on May 30, 1979. The United States was successful at the District Court and Court of Appeals levels. Upon appeal to the United States Supreme Court, that Court held that:

1. The Secretary of the Interior must secure approval from the governor (or appropriate state agency) before purchasing land (or interests in land) for waterfowl production areas.

2. The consents of Governor Guy and Governor Link could not be withdrawn (i.e., for 1.2 million acres of wetlands).

3. The 1977 State laws could not place additional restrictions on land purchased pursuant to the authorization of Governor Guy and Governor Link.

With that background, the current status of several waterfowl production area issues will be discussed.

III. LANDOWNER/FWS CONFLICTS

There have been no waterfowl production area easement acquisitions in North Dakota since 1977. Accordingly, most of the current landowner problems are related to the FWS enforcement program.

As of March 1982, the FWS had investigated 735 alleged easement "violations." The investigations led to 90 prosecutions in North Dakota, 18 prosecutions in South Dakota, and 10 prosecutions in Minnesota.²⁵

Early investigations led to civil actions against the landowner for injunctive relief (i.e., an order to close a drainage ditch). *United States v. Albrecht*, 496 F.2d 906 (8th Cir. 1974) provides one example. Robert Albrecht acquired, in 1967, a fee simple estate in land which was subject to a 1964 waterfowl production area easement. In 1969-1970, the United States discovered a fifteen-mile-long ditch near Alsen, North Dakota; the portion of the ditch running through the Albrecht land "was approximately five feet deep and 25-30 feet wide at the top." 496 F.2d at 909.

The United States instituted a civil action against Albrecht for violating the terms of the easement. The District Court found that "the plaintiff has no adequate remedy at law" and it enjoined Albrecht "from draining, or permitting the draining, of the marshes, sloughs, swales, and potholes on the . . . real estate, by ditching or by any other means." *United States v.*

²⁵ Interrogatory Answer 37 (March 26, 1982), *Towner County Water Resource District v. Key*, Civil No. A2-81-178 (D.N.D.).

Albrecht, 364 F.Supp. 1349 (D.N.D. 1973). The Court of Appeals affirmed the District Court decision. United States v. Albrecht, 496 F.2d 906 (8th Cir. 1974). Neither court suggested that the Albrecht land might be part of the National Wildlife Refuge system.

Criminal prosecutions, however, have been recently used by the United States as an enforcement technique. A Minnesota case, United States v. Seest, 631 F.2d 107 (8th Cir. 1980) will be used for illustrative purposes because it is the only reported Court of Appeals decision affirming a criminal conviction. The facts in Seest are quite simple:

Donald Charles Seest owns and operates a farm in Polk County in west central Minnesota. A quarter section of this land is subject to an easement in favor of the United States Department of the Interior, U.S. Fish and Wildlife Service, Bureau of Sport Fisheries and Wildlife. That easement, designed to preserve the land as a waterfowl production area, prohibits the owner from draining, ditching, or filling the land. In 1977, Seest engaged in construction work, installing drain tile and digging pits in the easement land in order to obtain water for an irrigation system on his farm lands. Subsequently the United States, by information, charged that Seest did knowingly disturb and injure and destroy real property of the United States in an area within the National Wildlife Refuge System by draining a waterfowl production area included within the easement land, in violation of 16 U.S.C. §668dd (1976).

On a bench trial, the District Court found Seest guilty and sentenced Seest to six months' imprisonment and to pay a fine of \$500, but provided that the sentence of imprisonment would be suspended and the defendant placed on probation subject to conditions that defendant pay the fine and "restore wetlands to their natural state."

The prosecution was based on 16 U.S.C. §668dd(c) which provides, in part: "No person shall knowingly disturb, injure, cut, burn, remove, destroy, or possess any real or personal

property of the United States, including natural growth, in any area of the [National Wildlife Refuge] System."²⁶

Another matter should be mentioned at this point since it involves the landowner.

Landowners were compensated for waterfowl production area easements by a one-time payment. The payment was computed by multiplying the number of identified wetland acres on a tract by an amount per wetland acre. Landowners are now discovering, however, that the value of the tract is substantially diminished by the waterfowl production area easement. A specific example will clearly illustrate this point.

The FWS has objected to a channel improvement project in Towner County because, among other things, several wetlands on land subject to waterfowl production area easements would be affected (the Hurricane Lake problem is discussed in more detail in the following section).

One aspect of the negotiations was to determine the value of the wetlands that would be affected. Accordingly, an appraisal was conducted by FWS personnel.

The proposed channel improvements were to be done on the N $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 31-T157N-R68W. This tract is subject to a waterfowl production area easement.

²⁶ A defendant in an unreported case later questioned the Seest decision. But the United States District Court for the District of North Dakota had ruled:

Appellant's initial premise on appeal, that private land subject to an easement for waterfowl management rights is not an area of the NWRS [National Wildlife Refuge System] as required by subsection 668dd(c), is without merit. The easement in question provides for the maintenance of the land as a "waterfowl production area." Subsection 668dd(a) provides for the consolidation of various categories of areas administered by the Secretary of the Interior for the conservation of fish and wildlife. These consolidated areas are designated as the "National Wildlife Refuge System." "Waterfowl production areas" are specifically listed in this consolidating section and, by definition, are part of the NWRS.

United States v. Welte, No. C2-81-49 (D.N.D. March 1, 1982), aff'd No. 82-1340 (8th Cir. October 14, 1982).

The waterfowl production area easement (Tract No. 363x)²⁷ covered 160 acres (W $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ NE $\frac{1}{4}$), but the FWS only identified 23.00 wetland acres on the tract. The landowner was paid \$1,800 (23.00 acres x \$78.26/acre = \$1,799.98) in 1975.

The FWS estimated that 16 wetland acres would be affected by the channel improvement project.²⁸ To establish the value of the wetlands, the FWS used the procedure explained below:

The appraisal method used for the estimate of value for the easement interests is essentially a "before-and-after" appraisal. Long established Federal law has demonstrated the "before-and-after" rule as the best method to be relied on to estimate market value when only a partial taking is acquired.

Uniform Appraisal Standards for Federal Land Acquisition specifically spell out (page 34), in the case of easement acquisition, ". . . the appraisal should be in the amount of the difference between the fair market value of the land before and the fair market value immediately after the imposition of the easement. Full consideration should be given to and due allowance made for the substantial enjoyment and beneficial ownership remaining to the owner, subject only to the interference occasioned by the taking and exercising of the easement."

Simply put, the appraiser in this case has appraised the easement lands, assuming the easement did not exist. Land sales without easements were compared to the subject lands to arrive at an estimated value in the "before" condition. Then, the appraiser selected land sales that had easements and again compared them to the subject lands and estimated the value in the "after" condition. Adjustments for other variables (soil, topography, access, etc.) are made during the process of making the comparison between sales and the subject lands. After all adjustments, the difference between the "before" and "after" values is attributable to the easement. By going one step further, the appraiser can estimate the number of wetland acres on the easement and arrive at a value per wetland acre, if that is desired.

²⁷ Statistics taken from the FWS "Easement Summary."

²⁸ Memorandum to Regional Solicitor from Acting Regional Director, FWS, dated December 10, 1982.

The FWS appraisers determined that the 16 wetland acres were valued at \$7,000 (\$437 per wetland acre).²⁹ It could, therefore, be assumed that the entire 160 acre tract had been devalued over \$10,000 (\$437 x 23) by the conveyance of the waterfowl production area easement.

I am not aware of any study to assess a waterfowl production area easement impact upon the value of farm land. Such a study should be conducted if the FWS intends to resume its acquisition program.

Further, uncertainty about the easement, particularly about the location of the wetlands which may be subject to the easement prohibitions or to the national wildlife refuge regulations, will continue to adversely impact the valuation of farmland subject to a waterfowl production area easement.

IV. WATER RESOURCE DISTRICT-FWS CONFLICT

There have been frequent conflicts between the FWS and water resource district boards.

One example was the attempt by the Ramsey County Water Management District and the Cavalier County Water Management District to construct Channel "A" between Dry Lake and Devils Lake. The FWS acquired a waterfowl production area easement on the route planned for Channel "A" as explained in the original complaint in Towner County Water Resource District v. Key:

32. The area immediately north of Devils Lake suffers from periodic flooding. Local interests, for decades, pursued efforts to resolve the flood problems and in 1966 federal and state agencies agreed to conduct a preliminary investigation of the feasibility of development of a watershed plan for the Edmore-Starkweather Watershed. Planning had satisfactorily progressed in the following four years so that a second agreement was executed among local sponsors, the FWS, the Soil Conservation Service and the State Water Commission. The second agreement called for, inter alia, the preservation of 13,500 acres of wetlands in the Starkweather Watershed prior to any construction on the Starkweather Watershed Project. In 1972 the FWS advised then Governor Guy that the FWS had acquired its share of wetland acres. However, the FWS later reversed its position on the project and successfully sought termination of further federal assistance for the project. The FWS kept the wetlands.

²⁹ Id.

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33. In 1974 local sponsors were determined to construct the essential elements of the Starkweather Watershed Project without federal financial support nor interference. At a May 29, 1974, State Water Commission meeting, the local supporters "urged approval of the construction of a drainage channel from Dry Lake to Six-Mile Bay. This was titled Channel 'A' under the suspended Starkweather Watershed Project" (meeting minutes). The Commission also addressed Channel "A" at the July 24, 1974, meeting.

34. The Chairman, Board of Directors, Ramsey County Water Management District, wrote to the FWS on August 9, 1974, concerning wetland easements on tracts which were to be affected by the proposed channel "A". The Chairman stated, in part:

. . . The Ramsey County Water Management Board is requesting permission to construct Channel A through those areas under easement to the Bureau of Sport Fisheries and Wildlife [FWS] in Ramsey County, Grand Harbor Township, 154 North, Range 65 West; NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 1, E $\frac{1}{2}$ of SE $\frac{1}{2}$ of Section 2, E $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 11 and what mitigating requirements are necessary for access through those areas

35. The FWS regional director responded on August 30, 1974. His letter stated in part:

We believe you are reasonably familiar with the views of the Fish and Wildlife Service regarding construction of major drainage outlets in the Devils Lake Basin. As Area Manager Gritman pointed out in his letter of August 21, the Service is opposed to granting drainage channel permits when there is no provision for maintenance of the wetland habitat lying above the drainage outlet. We support that position.

It is our understanding that the State Water Commission, in taking its action on July 24, 1974 granting approval for construction of "Channel A" and several other drainage channels, placed no effective restrictions on wetland drainage in the watersheds lying above these outlets. Therefore, the Fish and Wildlife Service cannot authorize the construction of "Channel A," or any other drainage channel, across lands and/or waters

which we have acquired in fee title or on which we have acquired easements, for the protection of wetland habitat.

36. In May 1975, the FWS urged the Corps of Engineers to deny a permit for the Channel "A" project (it was subsequently determined that no permit was necessary. National Wildlife Federation v. Alexander, 613 F.2d 1054.

37. The Board of Directors, Ramsey County Water Management District, made a second request for FWS cooperation in January and March 1977. The FWS responded in a March 21, 1977, letter from the Area Manager which stated, in part:

For Channel "A", if the present alignment is followed, mitigation will be required for all wetlands under easement. Similarly, mitigation will be necessary for all wetlands under easement along all channels subsequent to Channel "A". At this point, the formula of mitigation/replacement has not been clarified. Essentially, for Fish and Wildlife Service easements, all mitigation must be replacement on an equal habitat value basis.

With regard to private wetlands in Channel "A", it is our thinking preservation or other protected means are needed. Again, private wetlands throughout the basin that will be impacted by subsequent channels will require protection. As you know, our position throughout the Devils Lake Basin study has been that we do not oppose Channel "A" as long as no wetlands are drained in the basin and impacts to easement wetlands are mitigated.

38. The FWS demands were unacceptable to the Channel "A" sponsors. The sponsors avoided further involvement with the FWS by modification of the Channel "A" route.

39. Channel "A" was authorized by the State Water Commission. The authorization stated, in part:

Generally, it is the intent of the parties that Channel "A" shall be utilized to improve the drainage of agricultural land so that it can be consistently and uniformly more productive--at the same time reasonable storage of water in the upper basin is

maintained. Specifically, the parties agree that regulated ponds, sloughs, or lakes (i.e., ponds, sloughs, or lakes which require a permit to be drained pursuant to state law and any lawful supplementary or implementing regulations) in the Starkweather and Edmore watersheds will not be drained, except that controls, which are mutually acceptable to the Commission and the board having jurisdiction over a regulated pond, slough, or lake, may be constructed on regulated ponds, sloughs, or lakes to improve the drainage of sheetwater from agricultural land.

40. Channel "A" has been constructed and is now operational. However, Channel "A" cost about \$250,000 more to construct under the new route. Further, construction of Channel "A" pursuant to the new routing involved the drainage of more wetlands than would have occurred under the original routing.

The Districts, fortunately, completed the project because they could construct the channel, at an increased cost, around the blocking waterfowl production area easement.

However, the proponents of the Hurricane Lake outlet channel improvement project have not been so successful. Their problem is outlined in the amended Complaint in State v. Buterbaugh³⁰:

7. Hurricane Lake is a very shallow lake located in Pierce and Towner Counties, North Dakota. The lake drains, via Marvais Coulee, into Devils Lake.

8. Minor fluctuations in Hurricane Lake cause major problems to littoral landowners. These problems led to attempts by the boards of managers of local water resource districts to manage the lake. Lake management planning resulted in an application to the North Dakota State Engineer by the Board of Directors, Pierce County Water Management District, to improve the ill-defined outlet to the lake and to partially drain the lake (the application was dated October 24, 1974, but was not submitted to the State Engineer until 1975).

³⁰ The complaint in Towner County Water Resource District v. Key was amended in March 1983. Since the State of North Dakota was added as a party plaintiff and Gilbert Key was deleted as a party defendant (the position of FWS Area Manager has been abolished), the action has been recaptioned State of North Dakota v. Buterbaugh. Gaylen L. Buterbaugh is the FWS Regional Director.

9. The State Engineer investigated the application and held hearings thereon. On August 2, 1976, the State Engineer established a definite outlet elevation for Hurricane Lake and authorized the improvement of the outlet channel.

10. The Fish and Wildlife Service (FWS), United States Department of the Interior, was opposed to the channel improvements and the lake elevation selected by the State Engineer.

11. The Secretary of the Interior is authorized to acquire "small wetland and pothole areas, interests therein, and rights-of-way . . . to be designated as 'Waterfowl Production Areas'" pursuant to 16 U.S.C. 718d(c). The FWS policy (from at least March 1961) has been to prevent drainage by the selective purchase of waterfowl production area easements from landowners under this authority

12. Accordingly, the FWS purchased an additional block of waterfowl production area easements from individuals who owned land south of Hurricane Lake (the Hurricane Lake outlet channel meanders through the land).

14. The Boards of the Pierce County Water Management District, Towner County Water Management District, and the Benson County Water Management District began efforts to improve the outlet channel

15. However, the FWS immediately assumed that it had the authority to deny work in the outlet channel by the boards of the water management districts. A December 2, 1976, memorandum from the Devils Lake FWS office to the FWS area manager stated:

I . . . told them that they cannot go through our easements until any damage that might occur to the wetlands has been mitigated Our trump card is the fact that they have to go through some of our easements until such time as the WPA [Waterfowl Production Area] is protected, and any wetlands under easement which might be destroyed are mitigated.

16. The FWS later increased its mitigation requirement. A December 18, 1979, letter to the Chairman, Board of Directors, Pierce County Water Management District, stated:

The only alternative available at the present is mitigation by fee purchase. The requirements would be as follows:

1. The habitat required must be acceptable to the Fish and Wildlife Service.
2. The land acquired must be large enough in size to constitute a manageable unit (i.e., 40 acres minimum, or be contiguous to existing FWS lands.
3. The land acquired must contain a surface acreage of wetlands equal to the quantity of wetlands to which we will be relinquishing our interest.

The land agreed upon will be purchased by the water board and title transferred to the Fish and Wildlife Service. This action must have the approval of the Governor's Office.

I wish to remind you that before the Fish and Wildlife Service will proceed with a mitigation project, it will be necessary to protect water levels within the Waterfowl Production Area on the north end of Hurricane Lake to elevation 1551.0. This will require raising the existing culverts and road grade at this location.

17. A FWS employee also verbally advised plaintiffs that the FWS would confiscate any equipment of the districts or their contractors if channel improvements were made on land subject to the waterfowl production area easements without FWS authorization.

18. The boards of the respective water resource districts have the statutory authority to acquire, by condemnation if necessary, interests in land necessary to implement their water management responsibilities. Pursuant to this statutory authority, right-of-way easements were secured for channel improvements to the outlet of Hurricane Lake.

19. The boards secured right-of-way easements [for the channel improvement work from the private landowners].

20. The boards have entered a joint powers agreement (dated March 11, 1982) pursuant to N.D.C.C. 61-16.1-11. The purpose of the agreement is specified in

Article IV: "The Hurricane Lake Joint Water Resource Board shall have the power and authority to improve and maintain the outlet to Hurricane Lake."

21. The State Water Commission, at its April 7, 1982, meeting, allocated up to \$28,000 for the project. One of the conditions was that "all pending litigation concerning the waterfowl production area located in the NW¼ of Section 31, Township 157 North, Range 68 West, has been resolved to the satisfaction of the State Engineer". The funds may be available for an additional period.

The Hurricane Lake litigation was filed in late 1981. Discovery and negotiating have continued through 1982, but the FWS continues to maintain that the water resource districts must secure approval from the FWS before the stream channel can be improved. Final action by the U.S. District Court is expected in 1983.

Similar problems are being encountered by the Bottineau County Water Resource District with the reconstruction of Brander Drain No. 7. The FWS has acquired easements over land needed for additional project right-of-way.

A related problem involves refuges rather than easements. N.D.C.C. §61-16.1-41 mandates:

Any person, before draining water from a pond, slough, or lake, or any series thereof, which drains an area comprising eighty acres [32.37 hectares] or more, shall first secure a permit to do so. The permit application shall be submitted to the state engineer. The state engineer shall refer the application to the water resource district or districts within which is found a majority of the watershed or drainage area of the pond, slough, or lake for consideration and approval, but the state engineer may require that applications proposing drainage of statewide or interdistrict significance be turned to him for final approval. A permit shall not be granted until an investigation discloses that the quantity of water which will be drained from the pond, slough, or lake, or any series thereof, will not flood or adversely affect downstream lands. In addition, consideration shall be given to the state water resources policy set forth in section 61-01-26. If the investigation shows that the proposed drainage will flood or adversely affect lands of downstream landowners, the water resource board shall not issue a permit until flowage easements are obtained. Such flowage easements shall be filed for record in the office of the register of deeds of the county or

counties in which the lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. The provisions of this section shall not be construed to apply to the construction or maintenance of any existing or prospective drain constructed under the supervision of a state or federal agency, as determined by the state engineer.

Any person draining, or causing to be drained, water of a pond, slough, or lake, or any series thereof, which drains an area comprising eighty acres [32.37 hectares] or more, without first securing a permit to do so, as provided by this section, shall be liable for all damage sustained by any person caused by such draining, and shall be guilty of an infraction. When temporary ponding of water occurs due to spring runoff or heavy rains, an area not in excess of eighty acres [32.37 hectares] may be drained without first securing a permit.

The FWS or constituent special interest groups, such as the North Dakota Chapter of the Wildlife Society, argue that this law requires water resource districts to secure easements from the FWS if water from legal drains will eventually flow through a National Wildlife Refuge. Russell Drain in Bottineau County is an illustration of this problem. North Dakota Chapter of the Wildlife Society v. North Dakota State Water Conservation Commission, No. 7323 (Northeast Judicial District, N.D.).

This issue could be serious because of the location of certain national wildlife refuges. J. Clark Selyer NWR is at the lower end of the Souris (Mouse) River on the North Dakota-Manitoba border. Dakota Lake NWR is at the lower end of the James River on the North Dakota-South Dakota border. Lake Alice NWR control Marvais Coulee.

V. THE EASEMENT DELINEATION PROGRAM

Pursuant to federal law (16 U.S.C. §715k-5), the Secretary of the Interior is required to secure gubernatorial consent prior to the acquisition of land (or interests in land) for waterfowl production areas. Governor Guy and Game and Fish Commissioner Stuart authorized the acquisition of easements over 1,237,274 acres of wetlands. Governor Link and Commissioner Stuart made adjustments in authorizations for several counties adding 40,297 acres of wetlands. The state, therefore, authorized the acquisition of easements over 1,278,201 acres of wetlands.

The FWS acquired waterfowl production area easements over 4,788,300 acres from 1958-1977. Although the FWS identified (and paid for) only 764,522 wetlands at the time the easements were acquired, all wetlands within the 4.8 million acres are now being regulated by the FWS.

This discrepancy can be specifically illustrated by referring to specific counties. Benson County and Towner County provide two examples.³¹

	<u>Towner County</u>	<u>Benson County</u>
Total acreage subject to WPA easements	151,743.39	242,472.52
Wetlands Identified (and paid for) when WPA Easement Purchased	24,199.0	34,585.0
Percent of Wetland Acres per Tract Acres	0.1595	0.1426

The State, therefore, contends that the FWS must identify the 764,522 acres of wetlands which were originally identified (and paid for) AND must confine the terms of the easements to those acres.

A different problem faces the farming landowner or the tenant farmer. The FWS contends that the easement covers Type I wetlands³². It is difficult, if not impossible, for a landowner or tenant to identify all wetlands on a tract which could be subject to the easement provisions; the FWS contends that it determines what land is actually a wetland.

Governor Olson brought these problems to the attention of Secretary Watt and requested that a joint federal-state committee be established to delineate all wetlands on tracts subject to easements. Secretary Watt agreed, and a federal-state committee has been established. The members are:

³¹ Information extracted from Exhibit G-1 accompanying "Defendants' Response to Plaintiffs' Request for Admissions, Interrogatories, and Demand for Production of Defendants" (March 26, 1982), Board of Managers, Towner County Water Resource District v. Key, Civil No. A2-81-178 (D.N.D.).

³² Wetlands are frequently classified according to FWS Circular 39 (Shaw and Fredine, 1956). Type I wetlands are defined as areas with soils that are covered with water, or are waterlogged, only during variable seasonal periods (such as the spring months) but are usually dry during much of the growing season.

1. FWS Regional Director Gaylen L. Buterbaugh (Denver)
2. Department of the Interior Regional Solicitor John R. (Jack) Little (Denver)
3. Gilbert Key (FWS Bismarck office)
4. Game and Fish Commissioner Dale Henegar
5. Agriculture Commissioner Kent Jones
6. Special Assistant Attorney General Murray G. Sagsveen

The charge to the federal-state Committee was clearly outlined in a letter from Secretary Watt to Governor Olson (dated October 7, 1982). It stated, in part:

We heartily agree with your recommendation that Federal and State officials meet to discuss and negotiate the issues at hand concerning this program We suggest negotiation begin soon concerning the following aspects of the Waterfowl Production Area Program:

1. Guidelines presently being developed by the Fish and Wildlife Service for delineating wetlands on pre-1976 easements.
2. The Service's implementation plan for the actual process.
3. The establishment of priorities for the delineation process.

The federal committee members have proposed guidelines for the delineation process and have submitted the guidelines to the state. The state committee members have, in turn, suggested major modifications to the guidelines. A third draft is now being prepared.

The key provision of the state draft provided (p. 5):

The acreage of wetlands subject to the WPA easement on each tract is limited to the wetlands acreage on the Easement Summary³³ and the location of the wetlands illustrated on maps or other documents in the easement acquisition file unless:

³³ The Easement Summary is a document prepared during the acquisition process. It indicates the overall tract acreage, the wetland acreage, the cost per wetland acre, and other information.

- (1) Interior purchases additional easement rights from the landowner in accordance with state law;
- (2) the governor consents; and
- (3) the purchase is consistent with state law.

The federal-state committee must settle a basic issue during forthcoming negotiations: will the federal-state committee develop guidelines to identify all wetlands on tracts subject to easements or will the committee's guidelines define the wetland acres originally identified (and paid for)?

VI. PAYMENTS IN LIEU OF TAXES

The federal government need not pay real property taxes to the states.

Accordingly, the federal acquisition of land will cause economic and social dislocations to a community, the county, and the state. Federal ownership usually means loss of local tax revenue, a loss of a farm family (thereby affecting local businesses, schools, churches, etc.), and a loss of local control over the land (e.g., inability of local authorities to control noxious weeds).

After the FWS initiated its crash program to acquire land in North Dakota, the problems identified above were voiced to Governor Guy and other political leaders. Governor Guy responded by announcing that he would not approve further acquisitions of fee waterfowl production areas until suitable legislation was enacted to make payments to affected political subdivisions for the diminished tax base. The North Dakota congressional delegation took a lead role in securing passage of such legislation.

Governor Guy testified before at least one congressional committee in support of the legislation. He was critically questioned during one hearing by Representative Dingell, who was displeased by the governor's refusal to approve FWS acquisitions.³⁴ Representative Dingell later sponsored unsuccessful legislation to repeal the gubernatorial consent provision.

³⁴ Testimony in hearings before the Subcommittee on Fisheries and Wildlife Conservation, H.R. 11525, July 11 and 12, 1962.

The legislation was enacted in 1964.³⁵ This law was recently summarized in the 1983 GDU "Draft Supplemental Environmental Statement" (DES 83-14) at page III-30:

Developing wildlife areas will require transfer of land from private to public ownership. This will cause a change in tax revenues to counties in the project area. The average tax on farmland is currently about \$1.75 per acre. The Fish and Wildlife Service compensates counties through the Refuge Revenue Sharing Act for land under its jurisdiction. County entitlements are determined on the basis of 25 percent of the net revenues or three-quarters of 1 percent of the current market value or not less than 75¢ per acre, whichever amount is the largest. Lands are reappraised every 5 years. If the shared revenue fund is not sufficient to meet the maximum entitlement to counties, the act authorizes Congress to provide supplemental funds through special appropriations. The actual in lieu payment may or may not exceed actual taxes depending on whether or not Congress authorizes the special appropriation.

Based upon the provisions of this law, Governor Guy resumed approving fee acquisitions by the FWS.

The payments, however, have not met expectations. The statistics for FY76-FY81 (provided by the FWS³⁶ and calculated in my office) illustrate the problem:

³⁵ Act of August 30, 1964; Pub.L. 88-523; 78 Stat. 701; 16 U.S.C. §715s. This law should not be confused with the Payment in Lieu of Taxes Act of 1976 (PL 94-565; 31 U.S.C. §§1601-1607) which also provides for payments to local units of government in which certain federally owned land is located. PILT payments are made for lands in the National Forest System, the National Park System, land administered by the Bureau of Land Management, lands dedicated to federal water resource development projects, Corps dredge disposal areas, National Wildlife Reserve areas withdrawn from the public domain, inactive and semi-active army installations, and certain lands donated to the United States by state and local governments.

³⁶ United States Department of the Interior, Fish and Wildlife Service, data entitled "FY 81 Payments to Counties, Refuge Revenue Sharing Act as Amended" (December 14, 1981). Provided on March 23, 1982, under the Freedom of Information Act.

	FY76	FY77	FY78	FY79	FY80	FY81
Entitlement	\$0.87M	\$0.59M	\$0.57M	\$0.55M	\$0.57M	\$0.73M
Payment	\$0.63M	\$0.44M	\$0.29M	\$0.42M	\$0.57M	\$0.64M
Percentage	73%	74%	52%	76%	100%	88%

The amount paid per acre may be estimated by dividing the county payment by the fee acreage held by the FWS in the county. FY81 statistics will be used for the payments; 1981 statistics will be used for the acreage. Only four counties will be used for illustrative purposes:

COUNTY	PAYMENT	FEE ACREAGE	\$/ACRE
Stutsman	\$75,056	38,133	1.97
Ramsey	\$44,748	14,592	3.07
Renville	\$43,602	25,132	1.73
Kidder	\$14,959	11,676	1.28

VII. STATUS OF THE FWS ACQUISITION PROGRAM

The Secretary of the Interior was authorized to acquire waterfowl production area easements in 1958. Act of August 1, 1958; 72 Stat. 486, 487; 16 U.S.C. §718d(c). The Secretary was required to secure gubernatorial consent for such acquisitions in 1961. Act of October 4, 1961; Pub. L. 87-383; 75 Stat. 813; 16 U.S.C. §715k-5.

Governor Guy and Game and Fish Commissioner Stuart authorized the acquisition of easements over 1,237,274 acres of wetlands. Governor Link and Commissioner Stuart made adjustments in authorizations for several counties adding 40,927 acres of wetlands. The state, therefore, authorized the acquisition of easements over 1,278,201 acres of wetlands.

The FWS acquired waterfowl production area easements over 4,788,300 acres from 1958-1977. Although the FWS identified (and paid for) only 764,522 wetlands at the time the easements were acquired, all wetlands within the 4.8 million acres are now being regulated by the FWS.

The acquisition program was funded by the sale of duck stamps and an interest-free loan (from the U.S. treasury to the Migratory Bird Conservation Fund). The loan was first authorized in 1961 and has been periodically extended. When the loan

authority expires, 75 percent of all duck stamp revenues (now about \$12.5 million per year) must be allocated to retiring the interest-free loan (now \$147 million).

The FWS suspended the waterfowl production area easement acquisition program (frequently called the Small Wetlands Acquisition Program - SWAP) on July 1, 1977. The FWS contended that the several state laws enacted in 1977 (which became effective on that date) precluded the FWS from buying perpetual easements in the state.

The FWS caused a lawsuit to be initiated challenging the state laws. The U.S. Supreme Court has recently (March 7, 1983) declared that the 1977 laws would not apply to any lands acquired under the authorizations from Governors Guy and Link. It would appear, therefore, that the acquisition program could resume.

However, funding for the program will be curtailed at the end of this federal fiscal year (September 30, 1983) unless the Wetlands Loan Act is extended. If the Wetlands Loan Act is not extended, only 25 percent of duck stamp revenues will be available for land acquisition (the remainder to be applied to retirement of the \$147 million loan).

The administration has forwarded legislation to Congress which would, among other things, double the price of the duck stamp (\$7.50 to \$15 to generate \$25 million annually), forgive repayment of the \$147 million loan, and make available an additional \$53 million "loan" for 10 more years. The transmittal letter to the President of the Senate and the Speaker of the House was dated March 22, 1983.

Although passage of such legislation would provide funding for additional acquisitions by the FWS, other provisions of the bill suggest that the FWS is developing a strategy to prevent the drainage of wetlands in lieu of the existing policy of purchasing property interests in existing wetlands. This is discussed in more detail in Section VIII, below.

Another factor must be considered: land acquisition will not resume unless directed or allowed by the Secretary of the Interior. No such direction or authorization has yet been given.

VIII. THE "PROTECT OUR WETLANDS AND DUCK RESOURCES SYSTEM" (POWDRS)

It appears that the Department of the Interior is embarking upon a program to prevent activities which affect wetlands at the same time it is seeking authority to continue its land acquisition program.

The Secretary of the Interior has forwarded to the President of the Senate and the Speaker of the House draft legislation entitled the "Protect Our Wetlands and Duck Resources Act of 1983" (the transmittal letter was dated March 22, 1983). This draft legislation also contains provisions to increase the price of each duck stamp, to forgive the existing interest-free loan to the Migratory Bird Conservation Fund, to reextend the Wetlands Loan Act, and provide funding to the states for wetlands conservation through the Land and Water Conservation Fund.

The Protect Our Wetlands and Duck Resources Act of 1983 (POWDRA) would establish and "Protect Our Wetlands and Duck Resources System" (POWDRS) in the United States. The system would

be comprised of areas identified by the Secretary . . . as environmentally significant wetlands in the United States 5 acres or more in size that--

- (1) are undeveloped; and
- (2) provide significant wildlife habitat, particularly for migratory birds, species listed under the Endangered Species Act . . . or other species protected by Federal law or treaty; or
- (3) contribute significantly to the production of fish, shellfish, or other aquatic organisms; or
- (4) contribute significantly to water quality.

The Secretary of the Interior is directed to publish maps that identify system wetlands. The Secretary is to consult with states and other, publish notices, allow for comment, and hold hearings as a part of the publication process. A landowner may elect to have any wetland, not identified by the Secretary, to be included within the system; but, there is not a provision to delete an identified wetland from the system.

The purpose of the system is to prevent the use of federal funds to drain or adversely affect wetlands. Therefore, the key provision of the POWDRA states that "no new Federal expenditures may be made under authority of any Federal law for any purpose within any component of the System" except as specifically provided by the Act (the exceptions are listed in §106).

Although the full reach of the POWDRA may not be discovered until some person attempts, with direct or indirect federal funding, an activity which may affect a wetland, it appears that the scope of the legislation is exceedingly broad. It is not simply limited to Soil Conservation Service activities as was 16

U.S.C. §590p-1³⁷, nor to endangered species as was the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. §1531 et seq.)³⁸. Rather, it would apply to all federal funding, direct or indirect, on most wetlands in the United States.

Differences in opinion already exist about the draft legislation. Governor Olson commented (about an earlier version): "If this ever saw the light of day in North Dakota, we'd both be boiled in oil" (Washington Post, January 26, 1983). Although Governor Olson served on a secretarial committee which reviewed the bill, he did not support the legislation.

Others, however, believe the bill will be weak and ineffective. A vice president of the National Wildlife Federation complained that "Watt's bill makes no attempt to remove federal subsidies for any agricultural program" (Fargo Forum, March 23, 1983). A scientist with the Environmental Defense Fund (EDF) is quoted as saying (Fargo Forum, March 23, 1983):

37 This statute begins with the following statement:

The Secretary of Agriculture shall not enter into an agreement in the States of North Dakota, South Dakota, and Minnesota to provide financial or technical assistance for wetland drainage on a farm under authority of this chapter, if the Secretary of the Interior has made a finding that wildlife preservation will be materially harmed on that farm by such drainage and that preservation of such land in its undrained status will materially contribute to wildlife preservation and such finding, identifying specifically the farm and the land on that farm with respect to which the finding was made, has been filed with the Secretary of Agriculture within ninety days after the filing of the application for drainage assistance

38 The FWS proposed much of North Dakota as critical habitat for the whooping crane--at the request of the Sierra Club and the National Audubon Society--in 1978. 43 Fed.Reg. 36588-36590 (August 17, 1978). The effect of the designation was explained (at pp. 36588-36589):

[A]ll federal departments and agencies would be required to insure that actions authorized, funded, or carried out by them would not result in the destruction or modification of the critical habitat of the endangered whooping crane. Also . . . Federal agencies would have to consult with the Secretary of the Interior with respect to any action which may affect any of these critical habitats

The proposed critical habitat is illustrated on the attached Exhibit 1.

[M]oney still would be available for federal water projects and public road construction even if those projects destroy wetlands. Also, he said, federal mortgage and loan subsidies for homebuyers would continue regardless of whether the development threatens wetlands.

A summary of the bill is attached as Exhibit 2. The views of the Secretary of the Interior are explained in more detail in a March 22, 1982, news release attached as Exhibit 3.

The POWDRA is not the only legislation to extend the Wetlands Loan Act. Mr. Breaux has introduced H.R. 2395 which would simply extend the Act (16 U.S.C. §715k-3) until September 30, 1993.

IX. THE FEDERAL FARMLAND PROTECTION POLICY ACT

Congress has recognized that the conversion of farmland to other uses must be minimized. Accordingly, it recently enacted the "Farmland Protection Policy Act" (FPPA).³⁹

The rationale for the Act was clearly stated in the preliminary statement:⁴⁰

(a) Congress finds that--

(1) The Nation's farmland is a unique natural resource and provides food and fiber necessary for the continued welfare of the people of the United States;

(2) Each year, a large amount of the Nation's farmland is irrevocably converted for actual or potential agricultural use to nonagricultural use;

(3) Continued decrease in the Nation's farmland base may threaten the ability of the United States to produce food and fiber in sufficient quantities to meet domestic needs and the demands of our export markets;

(4) The extensive use of farmland for nonagricultural purposes undermines the economic base of many rural areas;

³⁹ Act of December 22, 1981; Pub.L. 97-98; 95 Stat. 1213, 1341-1344;

7 U.S.C. §§4201-4209. The Act became effective in June 1982.

⁴⁰ 7 U.S.C. §4201; 95 Stat. 1341-1342.

(5) Federal actions, in many cases, result in the conversion of farmland to nonagricultural uses where alternative actions are preferred;

(7) The Department of Agriculture and other Federal agencies should take steps to assure that the actions of the Federal Government do not cause United States Farmland to be irreversibly converted to nonagricultural uses in cases in which other national interests do not override the importance of the protection of farmland nor otherwise outweigh the benefits of maintaining farmland resources.

(b) The purpose . . . is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland.

The federal acquisition of farmland for perpetual placement in the National Wildlife Refuge System (NWRS) is, essentially, an "irreversible conversion of farmland to nonagricultural uses." In addition, the federal acquisition of farmland for perpetual placement in the NWRS may "undermine the economic base of many rural areas." Therefore, it is appropriate to review the requirements of the FPPA.

The FPPA requires the Department of Agriculture to "develop criteria for identifying the effects of Federal programs on the conversion of farmland to nonagricultural uses."⁴¹ Other federal agencies are concurrently required "to identify and take into account the adverse effects of Federal programs on the preservation of farmland" and to "consider alternative actions, as appropriate, that could lessen such adverse impacts."⁴² Following these preliminary actions, each federal agency, "with the assistance of the Department of Agriculture, shall, as appropriate, develop proposals for action to bring its programs, authorities, and administrative activities into conformity with the purpose and policy of [the Farmland Protection Policy Act]."⁴³

⁴¹ 95 Stat. 1342; 7 U.S.C. §4202(a)

⁴² 95 Stat. 1342-1343; 7 U.S.C. §4202(b)

⁴³ 95 Stat. 1343; 7 U.S.C. §4203(b)

The FPPA is an appropriate step toward reconciliation of competing claims for the same limited resources: farmland. The FPPA appears to require the Department of the Interior to "develop proposals for action to bring its [waterfowl production area acquisition] programs, authorities, and administrative activities into conformity with the purpose and policy of [the Farmland Protection Policy Act]."⁴⁴

X. AN INTERIM LEGISLATIVE STUDY (HCR 3901)

The Legislative Assembly has responded to the United States Supreme Court decision in State of North Dakota v. United States and to the "Protect Our Wetland and Duck Resources Act of 1983" with a concurrent resolution which resolved that:

any extension of the Wetlands Loan Act should contain the following provisions:

1. A requirement that new gubernatorial consents must be secured by the Secretary of the Interior for any waterfowl production area acquisitions after October 1, 1983;
2. All payments in lieu of taxes (pursuant to 16 U.S.C. §715s) must have been made for the five consecutive previous years before the Secretary of the Interior may acquire waterfowl production areas or refuges in North Dakota.
3. Payments in lieu of taxes may be made from the Migratory Bird Conservation Fund if adequate "in lieu" payments are not appropriated.
4. The 764,522 acres of wetlands on all pre-1976 waterfowl production area easements must be delineated.

The concurrent resolution also directs the Legislative Council to "study the impacts of refuges and waterfowl production areas on the state of North Dakota for the purpose of recommending corrective state and federal legislation." A copy of House Concurrent Resolution No. 3091 is attached as Exhibit 4.

⁴⁴ Id.

Forty-eighth
Legislative Assembly
of North Dakota

HOUSE CONCURRENT
RESOLUTION NO. 3091

Introduced by

Representative Mertens

(Approved by the Committee on Delayed Bills)

1 A concurrent resolution concerning the extension of the Wetlands
2 Loan Act and directing the Legislative Council to study the federal
3 waterfowl production area acquisition program.

4 WHEREAS, North Dakota has authorized the federal acquisition
5 of 1,278,201 acres of wetland easements for waterfowl production
6 areas; and

7 WHEREAS, the Fish and Wildlife Service has identified and
8 paid for 764,522 acres of wetlands for waterfowl production areas;
9 and

10 WHEREAS, the Fish and Wildlife Service is now exercising its
11 jurisdiction over all wetlands within tracts totaling 4,788,300
12 acres; and

13 WHEREAS, the United States Supreme Court has ruled in State
14 of North Dakota v. United States, No. 81-773 (March 7, 1983), that
15 gubernatorial consent concerning the remaining one-half million
16 acres cannot be withdrawn even in response to state problems with
17 the waterfowl production area program; and

18 WHEREAS, the United States has consistently failed to fully
19 appropriate funds to the states for payment in lieu of taxes
20 pursuant to 16 U.S.C. 715s; and

21 WHEREAS, the Fish and Wildlife Service has not expeditiously
22 acted to delineate the wetlands acquired in pre-1976 easements; and

23 WHEREAS, the waterfowl production area acquisition program
24 will resume in North Dakota if the Wetlands Loan Act is extended
25 beyond this fiscal year;

26 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF
27 REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE
28 CONCURRING THEREIN:

1 That any extension of the Wetlands Loan Act should contain the
2 following provisions:

- 3 1. A requirement that new gubernatorial consents must be
4 secured by the Secretary of the Interior for any waterfowl
5 production area acquisitions after October 1, 1983;
- 6 2. All payments in lieu of taxes (pursuant to 16 U.S.C. 715s)
7 must have been made for the five consecutive previous
8 years before the Secretary of the Interior may acquire
9 waterfowl production areas or refuges in North Dakota.
- 10 3. Payments in lieu of taxes may be made from the Migratory
11 Bird Conservation Fund if adequate "in lieu" payments are
12 not appropriated.
- 13 4. The 764,522 acres of wetlands on all pre-1976 waterfowl
14 production area easements must be delineated;

15 BE IT FURTHER RESOLVED, that the Legislative Council study
16 the impacts of refuges and waterfowl production areas on the state
17 of North Dakota for the purpose of recommending corrective state and
18 federal legislation; and

19 BE IT FURTHER RESOLVED, that the Legislative Council report
20 its findings and recommendations, together with any legislation
21 required to implement the recommendations, to the Forty-ninth
22 Legislative Assembly; and

23 BE IT FURTHER RESOLVED, that copies of this resolution be
24 forwarded to the Governor, the Secretary of the Interior, and each
25 member of the North Dakota Congressional Delegation.

